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In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 32

JAMES R. HOFFA, PETITIONER

v.

UNITED STATES OF AMERICA

No. 33

THOMAS EWING PARKS, PETITIONER

v.

UNITED STATES OF AMERICA

No. 34

LARRY CAMPBELL, PETITIONER

v.

UNITED STATES OF AMERICA

No. 35

EWING KING, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the court of appeals (1 R. 178–231) is reported at 349 F. 2d 20.

JURISDICTION

The judgments of the court of appeals were entered on July 29, 1965 (1 R. 232–235). A petition for rehearing filed by all petitioners was denied on October 7, 1965 (1 R. 236). On October 18 and 19, 1965, Mr. Justice Stewart extended petitioners' time within which to file petitions for writs of certiorari to and including December 6, 1965 (1 R. 237–240). The petitions were filed on December 3, 1965, and were granted on January 31, 1966 (1 R. 241–244; 382 U.S. 1024). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

The Court has limited the grant of certiorari to the following question (1 R. 241–244; 382 U.S. 1024):

> Whether evidence obtained by the Government by means of deceptively placing a secret informer in the quarters and councils of a defendant during one criminal trial so violates the defendant's Fourth, Fifth and Sixth Amendment rights that suppression of such evidence is required in a subsequent trial of the same defendant on a different charge.[1]

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment provides:

> The right of the people to be secure in their persons, houses, papers, and effects against un-

[1] The phraseology of the question is petitioners' (Hoffa Pet. 2; Parks Pet. 2–3; Campbell Pet. 3; King Pet. 4). As our argument demonstrates (pp. 73–86, *infra*), we do not concede that the government "plac[ed]" the informer anywhere, much less that it did so "deceptively".

reasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fifth Amendment provides in pertinent part:

> * * * nor shall [any person] be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; * * *

The Sixth Amendment provides in pertinent part:

> In all criminal prosecutions, the accused shall enjoy the right * * * to have the Assistance of Counsel for his defence.

STATEMENT

After a jury trial in the United States District Court for the Eastern District of Tennessee, petitioners Hoffa, Parks, and Campbell were convicted on count 3 and petitioners Hoffa and King were convicted on count 5 (1 R. 121–124) of a five-count indictment (1 R. 1–6) charging a conspiracy to violate (count 1) and four substantive violations (counts 2–5) of 18 U.S.C. 1503.[1] Count 3 charged that Hoffa,

[1] The conspiracy count (1 R. 1–3), which named only Hoffa as a defendant, was severed before trial (1 R. 179). A judgment of acquittal was entered as to Hoffa on count 2, in which he and one Lawrence Medlin were named as defendants (1 R. 4, 179). (Medlin, whose case was severed from Hoffa's (see 1 R. 179), was subsequently convicted on this count in the Middle District of Tennessee (see *United States* v. *Medlin*, 353 F. 2d 789 (C.A. 6), certiorari denied, 384 U.S. 973)). Hoffa was acquitted by the jury on count 4, as were Nicholas Tweel and Allen Dorfman, two other defendants named in that count (1 R. 5, 179).

Parks, and Campbell endeavored corruptly to influence Gratin Fields, a petit juror in a criminal trial in the Middle District of Tennessee in which Hoffa was the only defendant (1 R. 4–5). Count 5 charged that Hoffa and King endeavored corruptly to influence Mrs. James M. Paschal, another petit juror in the same trial (1 R. 5–6).[4] Hoffa was sentenced to four years' imprisonment on count 3 and four years' imprisonment on count 5, to run consecutively, and in addition was fined $5,000 on each count (1 R. 121). Each of the other three petitioners was sentenced to three years' imprisonment (1 R. 122–124). The court of appeals unanimously affirmed the convictions (1 R. 232–235).

I. THE GOVERNMENT'S EVIDENCE

Before turning to the facts more particularly germane to the question before the Court under the limited grant of certiorari, we summarize briefly the evidence adduced by the government at the trial in support of the charges of which petitioners stand convicted. While the restricted writ concerns solely the validity of the means by which the government obtained its proof (more precisely, the part of it by which Hoffa's guilt was principally established), the following summary of the evidence supporting the convictions is necessary, it is believed, in order to give context and background to the facts primarily rele-

[4] The indictment, which was returned in the Middle District of Tennessee, was subsequently transferred for trial to the Eastern District (1 R. 41–43).

vant to the question before the Court, which we detail at pp. 11–58, *infra*.

1. On October 22, 1962, petitioner Hoffa, who was and is president of the International Brotherhood of Teamsters, began to stand trial in the Nashville Division of the United States District Court for the Middle District of Tennessee in a criminal prosecution under the Taft-Hartley Act entitled *United States* v. *James R. Hoffa and Commercial Carriers, Inc.* (referred to herein variously as the "Test Fleet" or "Nashville" case), in which Hoffa was the only defendant on trial (2 R. 246–248, 251; 3 R. 1016). At about noon of the same day, Edward G. Partin, secretary-treasurer and business manager of Teamsters Local No. 5, of Baton Rouge, Louisiana, who had been a close associate of Hoffa's during the preceding five years, arrived in Nashville and registered at the Andrew Jackson Hotel, where Hoffa was also staying (2 R. 254–255, 256–257, 259, 260). Partin had been asked by an agent of the government to report any evidence of jury tampering or other illegal activities which might come to his attention during his stay in Nashville (2 R. 271, 280; 3 R. 1132).[4] On the day of his arrival Partin was told by petitioner King, president of the Nashville local of the Teamsters Union and a friend of Hoffa's, who regularly attended court sessions and was Hoffa's constant companion during the Test Fleet trial, that a meeting had been "set up on the jury that night" (2 R. 260; Tr. 2656).[5] Partin

[4] The circumstances under which this request was made, and the events which preceded Partin's coming to Nashville, are set forth at pp. 13–33, *infra*.

[5] "Tr." refers to the trial transcript.

did not attend the meeting (2 R. 260). That evening Hoffa called Partin to his hotel suite, where he told Partin, privately, that he wanted Partin to "stick around a day or two" as he "might have one or two people he wanted [Partin] to call" (2 R. 423–424, 425–426). Hoffa explained "that they was going to get to one juror or try to get to a few scattered jurors and take their chances" (2 R. 426). On the following day, October 23, Partin prepared to leave Nashville and return to Baton Rouge (2 R. 434, 438). Before leaving, he was again summoned by Hoffa to the latter's hotel suite, where Hoffa told him that when he (Partin) returned Hoffa might want him "to pass something for him." As Hoffa said this, he hit his rear pocket with his hand (2 R. 435, 437).

On the morning of October 24, James C. Tippens, a juror who had been tentatively seated on the preceding day, was excused after the court advised Hoffa and the attorneys for both sides that the juror had reported having been offered $10,000 in $100 bills by a neighbor in connection with his prospective service at the trial (3 R. 1036–1038, 1047–1048). Partin returned to Nashville on the following day, October 25 (2 R. 439). That evening, when Partin asked Hoffa about his statement that he might want Partin to "pass something" for him, Hoffa replied, "The dirty bastards [*sic*] went in and told the Judge that his neighbor had offered him $10,000. We are going to have to lay low for a few days" (2 R. 441–443).

2. The selection of the jury was concluded on October 25 and the panel was sworn on that day (2 R. 248–249). On October 26, petitioner King told

Partin that he intended to speak to a friend of a female juror "to get her swayed toward Mr. Hoffa" and that, although the juror and her husband were well off, "they loved money and $10,000.00 was a lot of money" (2 R. 443–444, 448–449). On the following day, the 27th, King visited Oscar Pitts, a member of King's local union, and discussed with Pitts the financial condition of the juror (Mrs. Paschal) and her husband, who was a a member of the Tennessee State Highway Patrol and a friend of Pitts' (Tr. 2655–2663, 2728, 2753). Pitts told King that Paschal desired a promotion in the highway patrol, and King said he would obtain such a promotion if Paschal "could talk to his wife" (Tr. 2660–2664).

On November 5, in Partin's presence, Hoffa berated King for not doing what Hoffa had "told him to do." "King keeps telling me he can get the patrolman," Hoffa said to Partin, "but he don't get to him. He keeps talking about it and fumbling around" (2 R. 462–463). Some time thereafter King told Partin that he was arranging a midnight meeting with the patrolman at a country spring (2 R. 464–465).

On November 14, Hoffa again chastised King in the presence of Partin and others for "not making a contact like he told him he would" (2 R. 472–473). He told King he "wanted some insurance" (2 R. 473), and called him "a stupid S.O.B. for thumbing around and not getting the job done" (2 R. 476). On the following day Hoffa asked King in Partin's presence whether he had "made the contacts" (2 R. 477–478).

On the evening of Saturday, November 17, pursuant to a prearranged telephone signal from Pitts,

King drove to Woodbury, Tennessee, where both Pitts and Paschal resided (Tr. 2600–2602, 2671–2672). Pitts met Paschal as the patrolman was coming off duty at 1:00 a.m. and followed him to Paschal's home (Tr. 2675–2676, 2805–2807). In the driveway of the Paschal residence, Pitts told Paschal that King wanted to see him about a promotion, and they arranged to meet shortly at a nearby river spring (Tr. 2807–2808, 2810–2811). Pitts drove King to the agreed-on rendezvous, where, in Paschal's patrol car, King told Paschal that he could help him obtain a promotion (Tr. 2696–2700, 2818–2820). When Paschal responded that he would appreciate any help he could get, King replied, "your wife is on this jury," and asked if Paschal could talk to her (Tr. 2820–2821). King told Paschal that if he would speak to his wife King would get him a promotion. Paschal agreed to speak to his wife (Tr. 2822). On November 20, King told Partin about his midnight meeting with Paschal. He remarked in this connection that, while Paschal had refused to accept money, he "wanted to get a promotion" (2 R. 480–481). On the same day Hoffa told Partin that he was "disturbed because the Highway Patrolman wouldn't take the money," and commented that if he had "taken the money it would have pinned him down and he couldn't have backed up" (2 R. 482–483).

3. Shortly after the Test Fleet trial began, petitioner Parks, a Negro, asked James T. Walker, a Negro Nashville police officer, whether he knew Gratin Fields, a Negro juror in the Test Fleet trial (Tr. 1525–1527, 1542–1544). When Walker replied that he

did, Parks asked him whether Fields "needed money," adding that "the big boys wanted to talk to" Fields, that they "would be willing to pay up to at least $10,000 to talk to him," and that they "needed one other to hang the jury or for a mistrial" (Tr. 1542–1543, 1547, 1592–1593). Walker thereafter arranged a meeting between Parks and Carl Fields, a son of the juror (Tr. 1547–1550). At a meeting in Parks' automobile, Parks asked Carl Fields whether he could talk to his father with regard to "voting for acquittal," saying that if he could talk to his father there would be "five thousand in it apiece for you" (Tr. 1728–1732). When Fields declined to speak to his father about the matter, Parks gave him five $20 bills and said that if Fields could tell him before nine o'clock that evening what kind of suit or coat his father would be wearing to court the next day he would receive another hundred dollars (Tr. 1732–1733). Parks explained that this information was needed by nine o'clock because "he had to make a call to Louisville" before that time (Tr. 1735–1737). That evening Carl Fields called Parks and reported that he had decided not to speak with his father about this matter. Fields offered to return the money Parks had given him, but Parks told him to keep it (Tr. 1740.) Parks thereafter attempted to communicate, through Walker, with a daughter of the juror, but the daughter also refused to cooperate (Tr. 1556–1559, 1802–1812).

Petitioner Campbell, a Negro business agent of the local union in Detroit of which Hoffa was president (Tr. 6212–6213) and a nephew of petitioner Parks

(Tr. 6156), arrived in Louisville, Kentucky, two days before the beginning of the Nashville trial and checked into a guest house in that city (Tr. 1973). The government introduced extensive evidence, much of it in the form of long-distance telephone toll tickets, from which the jury could infer that Campbell, during his stay in Louisville, acted in a liaison capacity between Parks and Hoffa in connection with Parks' above-described efforts to influence the vote of juror Gratin Fields (*e.g.*, Tr. 1959–1961, 1982, 1987, 2006–2007, 2017–2021, 2024–2027, 2032–2034, 2039–2041, 2071–2078, 2124–2127). Campbell also testified, on cross-examination, that Parks had visited him in Louisville "once or twice" during the trial (Tr. 6168).

On November 7, after Partin had expressed concern to Hoffa over the progress of the trial, Hoffa told Partin not to "worry about it too much" as he had "the colored male juror in [his] hip pocket" (2 R. 465–466). Hoffa explained that one of his business agents, "Campbell," "came into Nashville prior to the trial and took care of it" (2 R. 466). Hoffa told Partin that Campbell was related to the juror, whom Hoffa described as an old retired railroad worker who "[s]at and fished" all day, and that while the juror would not take any money he would not "go against his own people." Hoffa concluded, "[I]t looks like our best bet is a hung jury unless we can get to the foreman of the jury. If they have a hung jury, it will be the

same as acquittal because they will never try the case again" (2 R. 467).*

II. PARTIN'S CONDUCT IN RELATION TO THE NASHVILLE TRIAL

In this section of our Statement we set forth the material evidence adduced during this trial with respect to the activities of Edward G. Partin before, during, and after the Nashville trial. The evidence was adduced in part at two hearings, held during the trial in the absence of the jury in connection with motions by petitioners to suppress the use by the government of Partin's testimony,† and in part in the

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*On the basis of the information supplied to the government by Partin, government counsel moved on December 6 and 20, respectively, to excuse Mrs. Paschal and Mr. Fields from the jury (2 R. 250). Both jurors were excused after hearings which were closed to the public. With respect to the Fields motion, the government submitted, in sealed form, an affidavit by Partin relating to the remarks made to him by Hoffa on November 7 (2 R. 538–545; 4 R. 1628–1629). The Test Fleet trial terminated on December 23, 1962, with the jury unable to agree on a verdict (2 R. 250, 252).

†The first motion, orally made by counsel for petitioner Hoffa shortly after Partin had begun to testify, was based on the asserted ground that it had become apparent from the witness' testimony that he had been "planted" by the government in the councils of the defense during the Nashville trial for the purpose of carrying on "undercover work" on the government's behalf, and that this action by the prosecution officials had improperly intruded on Hoffa's rights as a defendant in that trial (2 R. 261–266). The second motion, made toward the end of the trial, claimed that Partin's testimony was the fruit or product of the allegedly unlawful interception and records-

course of the trial proper, in the presence of the jury, in connection with efforts by the defense to impeach the credibility of Partin. The following summary combines and collates all of the pertinent testimony. The principal facts germane to the periods preceding and following the Nashville trial are not in dispute. Where discrepancies in the testimony exist, they are noted. With two principal categories of exceptions, there is also no dispute as to the events (so far as they are related in the summary) which occurred during the trial. The exceptions relate (a) to statements, testified to by Partin as having been made to him on the opening day of the trial by Hoffa, King, and Nicholas Tweel, which indicated to Partin that plans were afoot to tamper with the jury, and on the basis of which Partin commenced to inform on his associates to Walter J. Sheridan, the federal official with whom he was in communication during the balance of the trial; and (b) to the questions whether and to what extent Partin attempted to ascertain during the trial, and reported to Sheridan, "legitimate" secrets, counsels, strategies, and tactics of the defense. As regards (a), the summary sets forth the pertinent statements as they were testified to by Partin (pp. 33–36, *infra*); Hoffa and Tweel denied making the statements attributed to them (3 R. 1064, 1084; 4 R. 1365; see note 29, *infra*). As regards (b), the rele-

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tion of two telephone conversations between Partin and Hoffa, held on October 8 and 18, 1962 (see pp. 20–31, *infra*), prior to the commencement of the Nashville trial (4 R. 1472; see also 1 R. 61–79; 4 R. 1457). Following separate hearings (2 R. 270–414; 4 R. 1473–1577), both motions were denied (2 R. 419; 4 R. 1578–1579).

vant testimony of all of the witnesses who testified on the subject is reviewed (pp. 41–53, *infra*). The court's pertinent findings of fact and conclusions of law appear at pp. 58–60, *infra*.

A. EVENTS PRECEDING THE NASHVILLE TRIAL

1. Late in September 1962 Partin was confined in the East Baton Rouge Parish jail awaiting trial on a State kidnapping charge (3 R. 1103; 4 R. 1335). That charge, for which Partin had been indicted on September 8 and on which he had surrendered himself on September 25 (4 R. 1345–1346), arose out of a family dispute in which Partin assisted a father, his best friend, in "kidnapping" his children from his separated wife (2 R. 596; 4 R. 1340, 1351–1352). Under Louisiana law, kidnapping, unless the person kidnapped has been returned unharmed, is a capital and therefore non-bailable offense. As of the latter part of September the children involved in the indictment in question had not been returned (4 R. 1336).

Partin was also at this time awaiting trial on a federal indictment, returned June 22, 1962, in the United States District Court for the Eastern District of Louisiana, charging him, in 26 counts, with the embezzlement and conversion of funds of his local union and falsification of the union's books and records with respect thereto, in violation of the Labor-Management Reporting and Disclosure Act (2 R. 320–321, 535–536, 629–630; 3 R. 772; 4 R. 1441–1442). On June 27 Partin had been released on $50,000 bond under the federal indictment, and had been at

liberty thereunder until his surrender to the State authorities, on September 25, on the kidnapping charge (3 R. 793–794; 4 R. 1441, 1442).

On September 27, 28, or 29, William Daniels, the administrative assistant to the District Attorney of the Nineteenth (East Baton Rouge) Judicial District of Louisiana (3 R. 1100; 4 R. 1316), visited Partin in the office of the warden of the jail in which Partin was confined (3 R. 1103–1104). The meeting had been requested by Partin, who had known Daniels for about a year (2 R. 272–273; 3 R. 1100–1101, 1103).[4] It lasted 15 to 30 minutes and was attended by Partin and Daniels alone (3 R. 1103–1104). On the basis of information reported by Partin to Daniels at this meeting, Daniels arranged a second meeting, held on the following day in the office of Daniels' immediate superior, Sargent Pitcher, the local State District Attorney (3 R. 1104–1105; 4 R. 1334). At this meeting, which lasted an hour or more and was attended only by Pitcher, Daniels, and Partin (3 R. 1105–1106; 4 R. 1334), Partin reported to the local officials an alleged plot by petitioner Hoffa to murder Robert F. Kennedy, the then Attorney General of the United States, which was said to have been hatched in Washington, D.C., some time during the previous summer (2 R. 606; 4 R. 1337, 1481-1482). Because the information reported "dealt with national security" and "was too rich for [Pitcher's] blood,"

[4] Partin had apparently communicated his wish to speak to Daniels to a person—either a Mr. Thompson or a Mr. Edwards—in the office of the local parish sheriff, who had then arranged with Daniels to see Partin (2 R. 628–629; 3 R. 791–792, 794–795, 796).

Pitcher reported the matter to the local (Baton Rouge) office of the Federal Bureau of Investigation and later, at the suggestion of the person in that office to whom he spoke, to Peter Duffy, an Assistant United States Attorney for the Eastern District of Louisiana, in New Orleans (3. R. 1105, 1106; 4 R. 1334, 1337, 1348, 1474, 1475–1476).*

Following his receipt of Pitcher's call, Duffy called A. Frank Grimsley, an attorney in the Criminal Division of the Department of Justice, in Atlanta, Georgia, Grimsley's principal duty station at the time (4 R. 1167–1168, 1208–1209, 1474, 1475–1476). Grimsley had conducted, with Duffy, the investigation of Partin—and of the latter's local union—out of which the pending federal indictment against Partin had grown, but he had never met Partin (4 R. 1169, 1474–1475). Duffy told Grimsley that he had been informed by Pitcher that Pitcher had received information from Partin "of a security nature," "of value to the government," and that Partin wished to speak to "someone with the government" (4 R. 1474, 1475–1476). Duffy did not advise Grimsley at this time of the nature of the information (4 R. 1476). Whether or not Hoffa's name was mentioned by Duffy is not clear.[10] Grimsley called Walter J. Sheridan, a special consultant to the Department of Justice, who was

* Pitcher was not positive whether he first called the F.B.I. and was by that office referred to Duffy or whether he called Duffy in the first instance. It was his best recollection, however, that he first reported the matter to the F.B.I. (4 R. 1334, 1348).

[10] Grimsley testified that he was not certain whether Hoffa's name was mentioned, but that he did not believe that it was (4 R. 1478–1479, 1484). Duffy was not questioned on the point.

Grimsley's immediate superior (2 R. 366; 3 R. 1054–1055; 4 R. 1476–1477, 1554),[11] to advise Sheridan of Duffy's call and of the fact that Partin desired to speak to "somebody in the Department of Justice about some grave matter" (4 R. 1553). Sheridan, who, like Grimsley, had never met Partin (2 R. 367; 4 R. 1476), told Grimsley to "go ahead and talk to Mr. Partin" (4 R. 1478, 1553).

Grimsley, accordingly, called either Pitcher or Daniels and made arrangements to speak with Partin, in Pitcher's office (4 R. 1334, 1480). Present at the meeting, which took place sometime between 1 a.m. and 6 a.m.[12] on October 2 or 3 and lasted from two to three hours, were Partin, Pitcher, Daniels, Grimsley, and Duffy (3 R. 1106, 1107; 4 R. 1291–1292, 1334–1335). At the meeting, which was tape-recorded by Daniels (4 R. 1292, 1334–1335, 1515), Partin repeated the substance of the information concerning the "assassination plot" which he had previously reported to Pitcher and Daniels (4 R. 1481–1482).[13] Partin testified that he had no recollection of any discussion at this meeting of Hoffa's Nashville trial (which was

[11] Sheridan, whose immediate superior was the Assistant Attorney General in charge of the Criminal Division, is not a lawyer (2 R. 366; 3 R. 1055).

[12] The reason the meeting was held at this unusual time of the day was that Pitcher and Daniels "[h]ad to wait until a jailer was on duty they could trust not to mention the fact that [Partin] was leaving the confines of the cell to talk to anyone" (4 R. 1480).

[13] Pitcher and Daniels had told Grimsley, shortly prior to the meeting, the details of what Partin had earlier reported to them. Thus Grimsley knew before the meeting the specifics of what Partin was to relate (4 R. 1481).

due to start in a few weeks) and that, if the trial was mentioned at all, it was only by way of a "casual remark" (3 R. 800).

At some point during the meeting, Pitcher, who was present during only a part of it (4 R. 1334), discussed with Partin the State kidnapping charge on which he was confined and the possibility of his being released on bond with respect to it if he returned the children for whose abduction he was being held (4 R. 1296, 1298, 1299–1300, 1349). He told Partin that he knew that Partin knew "where the children were;" that he was holding Partin "personally responsible for their safety;" that all he was interested in was "to get those children back;" and that, if they were returned, he (Pitcher) "would not oppose bond" and "would recommend a reasonable bond" (4 R. 1336–1337; see 4 R. 1296, 1298, 1299–1300). Neither Grimsley nor Duffy, who otherwise participated actively in the meeting (4 R. 1292), took part in this phase of the discussion (4 R. 1296, 1299). Pitcher denied that he told Partin that "in order for him to go ahead with the Federal Government it would be necessary for him to return the children" (4 R. 1349). Pitcher stated that his "only dealings with Partin" during this period "were to effect the return of these children"; that that was his "sole purpose in talking to Mr. Partin"; and that following the meeting he had nothing further to do with Partin so far as the matters of interest to the federal officials were concerned (4 R. 1340).

Some time following the meeting just described, a second early-morning meeting, attended by the same persons who participated in the first one with the

exception of Pitcher, who was absent from the second meeting, was held in Pitcher's office (4 R. 1170, 1295, 1335). This meeting, the date of which does not appear,[14] occurred at about 3 a.m. and lasted "about an hour" (4 R. 1295). It is unclear from the record what was discussed at this meeting. Duffy, one of the participants, could not recall whether Hoffa's name came up at all at this meeting (4 R. 1295–1296). He was certain, however, that there was no discussion about "getting Mr. Partin out of jail" at this time (4 R. 1296).[15]

On October 4, at approximately 2 a.m., the children involved in the "kidnapping" charge were returned unharmed (4 R. 1350-1351). Partin, whose request to be released on bail made on September 29 had been opposed by Pitcher and denied by the court (4 R. 1336, 1347), was thereupon, on October 5 or 6, pursuant to Pitcher's recommendation, released on $5,000 bond (4 R. 1337). Pitcher testified that he made this recommendation pursuant to his understanding with Partin that he "would recommend a reasonable bond if, as, and when the children were returned unharmed" (4 R. 1351). Asked if the recommendation "also arose out of the conversations with Mr. Duffy

[14] Duffy estimated that the second meeting took place from four days to a week after the first one (4 R. 1295), which, however, he "guess[ed]" had occurred "around" September 30 or October 1 (4 R. 1291).

[15] It does not appear whether Partin was still in jail at the time of this meeting. As noted in the text immediately following, Partin was released on bond on October 5 or 6. Because of the uncertainty of the date of the second early-morning meeting in Pitcher's office, it is not possible to state with certainty whether Partin was still confined as of the time of that meeting.

and Mr. Grimsley," Pitcher replied, "Absolutely not" (*ibid.*).[16]

In the meantime, following his conference with Partin during the early-morning hours of October 2 or 3 (the meeting attended also by Duffy, Pitcher, and Daniels, see *supra*), Grimsley reported to Sheridan the "gist" of the information which Partin had given him at the meeting (4 R. 1554, 1557). Sheridan reported the information to a bureau supervisor of the F.B.I. in Washington (4 R. 1555, 1563–1564). An F.B.I. investigation of Partin's charges against Hoffa followed, a report of which was furnished to Sheridan (4 R. 1555–1556).[17] The F.B.I.'s investigation included a lie-detector test administered to Partin by a polygraph expert who concluded that Partin was telling the truth (2 R. 606, 607; 3 R. 801–806, 830–843; 4 R. 1509–1510).

2. On October 6, 1962, the surety on Partin's $50,000 federal bail bond—the United Bonding Insurance Company—withdrew from its obligation on the bond, and as a consequence Partin was required to post a new bond in the same amount (3 R. 793; 4 R. 1442–1443). He was able to do this with the assistance of some friends, who consented to become his personal sureties (3 R. 893–894). United, the surety on the original bond, was a business interest of Allen Dorfman, an associate of Hoffa's (and codefendant with

[16] The kidnapping charge was subsequently, on December 12, 1963, nol-prossed and dismissed "at the request of the mother," who "had the children back and * * * wouldn't testify against her husband" (2 R. 596–597; 4 R. 1340, 1351–1352).

[17] A copy of this report was submitted to the court at the instant trial as a sealed exhibit (4 R. 1556, 1565).

him at the instant trial), and Hoffa, to Partin's knowledge, had been instrumental in getting Dorfman to put up the bond (3 R. 748–749, 794, 1096). When the bond was canceled, Partin heard rumors that Hoffa had been the person behind the cancellation and had thereby "sold [him] out" (2 R. 630, 644; 3 R. 747–748, 955). He was told, for example, by his attorney that Hoffa had "doublecrossed" him (3 R. 747–748). While Partin was unsure as to just what Hoffa's role had been in the matter, he felt that since Hoffa had had a hand in arranging for the bond in the first place, he must also have had something to do with its cancellation (3 R. 749, 751). At all events, Partin was desirous of speaking to Hoffa about the matter, ascertaining if it was true that Hoffa had "pulled [his] bond," and learning, if so, the reason (2 R. 644–645; 3 R. 747–748, 955, 958–959).

On about the same day—October 6—on which Partin was required to post his substitute federal bail bond, Daniels commenced a four-day period of temporary residence at the Holiday Inn Motel in Baton Rouge, during which he conducted an official investigation in his capacity as a law-enforcement official of the State of Louisiana (3 R. 1108–1110). Pursuant to an agreement with Daniels, Partin also stayed at this motel during this period, and the two met intermittently (3 R. 1108–1111). For the purpose of seeking corroboration of various items of information which Partin had been reporting to Daniels since the latter part of September (4 R. 1513–1514, 1540), Daniels instructed Partin in the use of a recording

device, furnished by Daniels,[18] and Partin recorded a large number of telephone conversations placed by him to various persons from the motel (3 R. 1112, 1116–1119, 1124; 4 R. 1513–1514, 1531–1532).[19] In these activities Daniels was acting entirely in his capacity as a State law-enforcement officer; he had not been asked to engage in this investigation by any federal official or agency (3 R. 1113, 1137–1138; 4 R. 1512, 1514–1515). Among the recorded conversations was a call which Partin placed to Hoffa in Washington, D.C., on October 8 (3 R. 1111–1112). The call, which Partin charged to his local union (4 R. 1635), was not made at Daniels' request; Partin had "long before" told Daniels that he had personal reasons for calling Hoffa, at a phone which he felt he could use without being overheard by "a bunch of other people" (3 R. 1112). Partin had known Hoffa closely since 1957, had dealt with him on many occasions on union business and on personal matters, and had spoken to him on the telephone many times (2 R. 257). One of the "personal" matters which Partin desired to discuss with Hoffa was whether Hoffa had been responsible for the cancellation of Partin's fed-

[18] The device belonged to the State District Attorney's Office and was the property of the State of Louisiana (3 R. 1112, 1119).

[19] The total number of recorded calls to which Partin was a party, including those made during the four-day period beginning October 6 and those made during a subsequent three-day period beginning October 17 (see p. 27, *infra*), was between 80 and 100 (3 R. 1123–1124; 4 R. 1517, 1523, 1543–1544). In only two of these, to which we refer in detail in the text, was Hoffa the other party to the call (4 R. 1517).

eral bail bond, and if so why (2 R. 644–645; 3 R. 747–748, 955, 958–959; see pp. 19–20, *supra*).

In the course of the telephone conversation (a transcript of which was introduced into evidence by the defense, see 4 R. 1433–1436), Partin, referring to various troubles he was having with his local union and to the pending federal indictment arising out of those difficulties, requested a meeting with Hoffa to "talk this thing out." Hoffa agreed to see Partin, stating that he would be "here [*i.e.*, in Washington] all week" and that Partin could get in touch with him as "[s]oon as you get up." Partin advised that he would call Hoffa later to let him know "when I'm coming" (4 R. 1633). The entire conversation—exclusive of preliminary exchanges between Partin, the telephone operator, and Hoffa's secretary—follows (4 R. 1632–1635):

HOFFA. Hello.

PARTIN. Hello.

HOFFA. Hi, Ed.

PARTIN. How are you doing, Jimmy?

HOFFA. All right. How are you?

PARTIN. Pretty good.

HOFFA. On the street?

PARTIN. Yea, just got out—uh, Saturday.

HOFFA. I want to tell you something brother. You better be very, very careful. You're not going to get any bonds because they are really trying to cut you down.

PARTIN. Yea. I know that. I got some pretty damn good information they are trying to hang me under that. Ah, they're trying to talk to Burns on this.

HOFFA. What.

PARTIN. The local members here and the business agents that I'm working on talked to Burns on it.

HOFFA. Uh, 150,000

PARTIN. Yea. Got a bonding company and all. Ah, what I was thinking Jimmy, after I get this thing straightened out today and tomorrow and everything if you get an opportunity or something, I would like to get with you and talk with you and talk this thing out.

HOFFA. Well, I'll be here all week.

PARTIN. You will be there all week.

HOFFA. Yea.

PARTIN. When would you like for me to call you? When you

HOFFA. Soon as you get up.

PARTIN. All right.

HOFFA. You going to call me or come up?

PARTIN. Well, I'll just call and ask you about, let you know when I'm coming, I'll ask you about. You know, we have got the General Chemical election coming up?

HOFFA. Yea, about that, we got a problem. Dusty wants to put that local in trusteeship and we can talk about that.

PARTIN. Yea, I'll tell you Dusty is the one who's going to hang me if he don't shut Chuck Winter's mouth up.

HOFFA. Shut up who?

PARTIN. Chuck Winter's mouth running.

HOFFA. What's he doing?

PARTIN. Talking to everybody that can be talked to about all these cases and everything about trying to shake Judy Al(?) [20] and then

[20] So in the original transcript of the recording. It appears that "Judy Al" was a mistranscription of "J. D. Albin" (4 R. 1434–1435).

and behind the scenes Judy Al(?) is working right with the people about trying to hang me.

HOFFA. Well, I guess I better call Winters.

PARTIN. Good enough. I'll call you I'll try to get things straightened out today and tomorrow and I'll give you a call and then I'll come on up.

HOFFA. You better make sure that local is running right, and hold them together so the members know what's going on.

PARTIN. That's what I'm talking about; after I get everything straightened here.

HOFFA. Get around to all your members.

PARTIN. We got a meeting tonight along, then I'll know then after I meet with them. I'll know then you know what

HOFFA. What did they set the trial on the kidnapping?

PARTIN. Ah, that won't come up, Jimmy. There's nothing to that. That'll never come up. They have just another way to get me in jail and have me setting around.

HOFFA. I think it was more than that. I think it was effort to get your first bond cancelled.

PARTIN. Yea, that's what the attorney seems to think. And on these now the commercial loan we were supposed to get a hold of the Federal Judge and tell him that we might run this local through fine (mumbled) and get a written statement from him and let me operate and move around like I should so he won't let them cancel, cancel the date—until then I am going to be darn careful because they are going to be watching every move.

HOFFA. Of course, you can't leave then until you get permission.

PARTIN. That's what I think but he's going to take and get a hold of him today, he appointed that Federal Judge. That's it then. Be seeing you.

HOFFA. Let me know when

PARTIN. Sure enough Jimmy.

Daniels, according to that witness' own testimony, played the tape-recording of this conversation to Pitcher, who in turn played it to Grimsley, and possibly to Duffy, in Daniels' presence (3 R. 1120–1121). Precisely when these events occurred does not appear, but the inference from the witness' testimony as a whole is that they occurred shortly following the recorded conversation. Daniels also testified that a copy of the recording, the original of which was retained by Daniels, was furnished to the federal government not later than October 10 (3 R. 1121). The representative of the federal government to whom it was furnished, according to Daniels, was either Grimsley or Duffy (3 R. 1121–1122). The delivery was made, Daniels said, at a meeting in Pitcher's office at which Pitcher, Daniels, and either Grimsley or Duffy—Daniels could not recall which—were present (*ibid.*). Daniels did not inform Partin (who was not present at the meeting) that the federal government was being furnished a copy of the tape (3 R. 1121, 1123). There was some discussion of Hoffa and Partin at the meeting, but no specific plans for the future were discussed, and the matters which were discussed in no way related to the then upcoming Nashville trial (3 R. 1122–1123, 1139).

Grimsley testified that he first received a copy of this recording in the spring or summer of the following year, 1963 (4 R. 1485). Speaking generally, however, of this recording and the recording of a subsequent conversation between Partin and Hoffa, made ten days later (see pp. 27–31, *infra*), Grimsley testified that he first "saw" the recordings, in Pitcher's office, in November or December 1962 (4 R. 1169–1170) and that he was "advised of [their] contents," by Daniels, "[s]omewhere around" October 20 of that year (4 R. 1485)—two days before the commencement of the Nashville trial. Duffy was not questioned about either recording.

On October 10 and 14, Partin again made calls to Hoffa, but these were apparently not recorded (3 R. 1129; 4 R. 1486–1487, 1517),[21] and there is no indication in the record as to what was said in either, with the single exception that it can be inferred—from a statement of Partin's in his subsequent call of October

[21] Daniels testified that he thought there had been phone calls by Partin to Hoffa on October 10 and 14, but that he did not recall whether they had been recorded (4 R. 1517). He referred, in addition, to a recorded call which Partin had sought to place to Hoffa sometime between October 8 and October 16 (the tape of which he had mislaid), in which Partin intended to advise Hoffa that he had access to a supply of a plastic explosive which had been reported in the press to have been stolen in the New Orleans area (4 R. 1545, 1549–1550). Daniels could not recall, however, whether Hoffa had actually spoken to Partin on that occasion, and he had no recollection of hearing Hoffa's voice on the tape (4 R. 1549–1550). Grimsley testified that he knew there had been "some" phone calls (between Partin and Hoffa) between October 8 and October 18, but he had no knowledge of what had been said in the calls or whether they had been recorded (4 R. 1486–1487).

18 (which was recorded, see *infra*)—that Hoffa informed Partin in one of the intervening conversations that he was going to be in Nashville on October 22 (see p. 28, *infra*).

3. On October 18, Partin placed another recorded telephone call to Hoffa from the same Baton Rouge motel from which the October 8 call had been made (3 R. 1123–1124). In this instance Partin reached Hoffa at the Essex House, in Newark, New Jersey (3 R. 1125; 4 R. 1437, 1635). As in the case of the earlier conversation, the call was billed by Partin to his local union (3 R. 1127) and was recorded, by Partin in Daniels' presence, with the same State-owned recording device which had been used in the previous instance (3 R. 1124, 1130). The call was one of a series of calls, all recorded, which Partin made on "that day, the day prior, and the day subsequent" (3 R. 1123–1124, 1130).[22] As in the case of his activities during his earlier stay at the motel (October 6 to 10), Daniels was acting during this period exclusively in his capacity as a law-enforcement official of the State of Louisiana; the federal government "had nothing to do with" his actions (3 R. 1130, 1137–1138; 4 R. 1511–1512, 1514–1515, 1571).[23]

The transcript of the October 18 recording (which, like that of the earlier one, was introduced into evidence by the defense, see 4 R. 1437–1440) indicates

[22] Partin had affixed the recording device to the telephone instrument and was recording all of his conversations "indiscriminately" (3 R. 1130).

[23] Grimsley testified that he had had "nothing to do with those recordings" and did not know what Daniels' and Partin's "real purpose" was in making them (4 R. 1488).

that Hoffa accepted Partin's call although he had just refused another long-distance call (4 R. 1636). The entire conversation—exclusive of Partin's preliminary colloquy with the telephone operator and an unidentified person in Hoffa's office to whom Partin spoke before Hoffa came on the line—follows (4 R. 1636–1637):

HOFFA. Who is this?

PARTIN. Ed. Ed Partin.

HOFFA. Yes, Ed.

PARTIN. I hate to interrupt you, Jim but I need to talk to you on——

HOFFA. Yes.

PARTIN. ——when I can see you—you'd said you'd be there on the 22nd in N'ville—what's the best day to come?

HOFFA. The 22nd I'm going to be there.

PARTIN. Allright.

HOFFA. I am going to be there Sunday also.

PARTIN. Allright. Then a . . .

HOFFA. Sunday afternoon.

PARTIN. Will Sunday or Monday be allright if I couldn't get the schedule out either one.

HOFFA. Right.

PARTIN. We won that election at General Chemical.

HOFFA. Wonderful.

PARTIN. 142 to 92.

HOFFA. Wonderful.

PARTIN. So, I wanted to let you know about that also.

(Apparently a bad connection at this point.)

HOFFA. Hello.

PARTIN. Hello.

HOFFA. What about Bulk Transport:

PARTIN. They all back to work, Jimmy.

HOFFA. Wonderful.

PARTIN. Lake Charles was dissatisfied but they didn't vote for it but . . . . the majority ruled on that and they are back to work.

HOFFA. Allright Ed either Monday or Tuesday at the Andrew Jackson Hotel.

PARTIN. Andrew Jackson Hotel.

HOFFA. Now, Monday you will have to be there after 1:00 o'clock.

PARTIN. One o'clock.

HOFFA. Yep.

PARTIN. Allright, fine Jimmy.

HOFFA. Thank you.

PARTIN. Thank you a lot.

At the trial Partin testified as follows when asked about this telephone conversation (2 R. 258, 644–645; 3 R. 850–851):

* * * * *

Q. What was said in that conversation?

A. Well, I was supposed to have met Mr. Hoffa up there and then he told me, he said, "No," said, "I will be in Nashville the weekend before the 22nd." Said, "Just come on down to Nashville."

* * * * *

Q. Did Mr. Hoffa call you and ask you to come up there?

A. No, sir, he did not. He told me when I called him back.

Q. Did you want to be invited to come up here?

A. Yes, sir. I wanted to find out why Mr. Hoffa sold me out and pulled my bond and I wanted to talk to him.

Q. So, you did have a personal matter you wanted to discuss with him?

A. Yes, I certainly did but I didn't tell him I wanted to come to Nashville.

* * * * *

Q. All right. Now, you initiated this phone conversation on October 18th?

A. Um-humm.

Q. Now, what was it you said to Mr. Hoffa when you started this conversation?

A. I believe he asked me where I was at, I believe that was the first thing that was said.

Q. Sir?

A. I believe the first thing that was said that he said, "Where are you at?" To the best of my recollection I told him I was in Baton Rouge, that I wanted to talk to him and then he said, "Well," he said, "you can come up here." And he thought a few minutes, evidently, and he said, "No, I will be in Nashville the coming weekend." I believe he said, he said, "You can come on down there." He said, "I will be there Saturday or Sunday." Something along those lines or words.

* * * * *

Q. Well, what was the purpose for your call?

A. Well, as I said, it was to discuss matters concerning personal affairs and union matters.

Q. Now, the personal affairs related to your bond on the indictment, isn't that right?

A. Some of them may have.

* * * * *

Daniels, in Partin's absence, telephonically reported the "substance," or "contents," of the October 18 con-

versation to Grimsley that same day (3 R. 1126–1127; 4 R. 1485, 1488). Partin independently told Grimsley, also on the 18th, about the conversation (2 R. 636–637; 3 R. 846–847; 4 R. 1488). Both Daniels and Partin, in communicating this information to Grimsley, told Grimsley that Hoffa had "invited" Partin to Nashville, and Grimsley so understood (4 R. 1488–1489; cf. 4 R. 1628). Grimsley reported the information to Sheridan at about the time that he learned it (4 R. 1486, 1557). Grimsley did not receive a copy of the recording of the conversation until a couple of months later, in or about December (3 R. 1126–1127; 4 R. 1485).

As a consequence of Grimsley's report to Sheridan of the "gist" of the October 18 conversation between Partin and Hoffa, Sheridan knew that Hoffa had told Partin that Partin "could see [Hoffa] in Nashville" (4 R. 1557–1558). Sheridan, who was planning to be in Nashville himself for the Test Fleet trial (scheduled to commence the following Monday, October 22), told Grimsley—according to Sheridan's testimony"—to ask Partin to call Sheridan when Partin "got to Nashville," "if he saw any evidence of jury tampering or other illegal activity," and Sheridan instructed Grimsley to give Partin Sheridan's Nashville telephone number for this purpose (2 R. 370; 4 R. 1557–1558).

4. On Saturday, October 20, Daniels and Partin met and conferred with Grimsley in an Atlanta hotel room reserved for the purpose by Grimsley (2 R. 599–607, 620; 3 R. 1131–1132; 4 R. 1508, 1627). Daniels and

[24] See note 26, *infra*, p. 33.

Partin arrived in Atlanta, from New Orleans, on the same aircraft and proceeded to the hotel together (3 R. 1127–1128, 1131). Daniels' trip, which he took with his superiors' consent and at his own expense (he was in any event not reimbursed for it out of federal funds), was made at the request of Grimsley, who did not advise Daniels in advance why Grimsley wished to see him (3 R. 1128–1129; 4 R. 1206).[25] Daniels had not consulted with Partin concerning the trip before their departure. Daniels knew in advance, however, that Partin was to be on the same plane, because Grimsley, in asking Daniels to come to Atlanta, had told Daniels Partin's "flight schedule," and Daniels had booked a reservation for himself on the same flight (3 R. 1129). Partin asked Daniels during the trip who was paying for Daniels' accommodations. When Daniels replied that he was, Partin "offered to pay [Daniels] back" (*ibid.*). Daniels' conversation with Partin on the plane was very brief and in no way related to the approaching Nashville trial (3 R. 1131, 1139).

The discussion between Grimsley, Partin, and Daniels at the Atlanta hotel at first concerned matters in no way related to the Nashville trial (3 R. 1132). According to Partin, these extraneous matters occupied "the majority part of the meeting" (2 R. 637–638). Eventually the discussion turned to Partin's October 18 telephone call to Hoffa. Grimsley asked Partin if he was going to "comply with" Hoffa's "request" that

[25] Daniels testified that it was not unusual for him to "go to other law enforcement agents," either on his own initiative or at their request, to discuss matters in which he or they or both might be interested (3 R. 1128).

Partin meet him. Partin advised Grimsley that he planned to "meet with Mr. Hoffa as soon as possible" (3 R. 1132, 1140). Grimsley then asked Partin if he would "keep his eyes and ears open," and, should he observe any evidence of jury tampering or other illegal activities, to report it to Sheridan in Nashville (2 R. 271, 279–280, 648; 3 R. 1132, 1140; 4 R. 1212, 1489).[26] Partin "agreed to do so" (2 R. 280; 4 R. 1212), and Grimsley gave Partin Sheridan's Nashville number (2 R. 259, 280; 3 R. 1132).

Following the meeting, Daniels and Partin returned together by plane to New Orleans, where Daniels parted company with Partin and proceeded alone to Baton Rouge (3 R. 1132–1133).

B. EVENTS DURING THE NASHVILLE TRIAL

1. Partin's reports to Sheridan concerning jury tampering

Partin arrived in Nashville around noon on Monday, October 22, the first day of the Test Fleet trial (3 R. 809–810). While changing planes in Atlanta en route, he called Grimsley to let him know that he was on his way to Nashville (3 R. 809). Upon his arrival in Nashville, he registered at the Andrew Jackson Hotel (2 R. 281). Hoffa had previously engaged a suite of rooms on the seventh floor of the same hotel, which he used as his headquarters during the trial (2 R. 281, 336, 350). After checking in, Partin

[26] According to Grimsley, Grimsley made this request of Partin on Grimsley's "own volition" (4 R. 1488). As noted at p. 31, *supra*, Sheridan testified that he instructed Grimsley to ask Partin to take this action.

went to the coffee shop of the hotel to wait for Hoffa, who was still in court at the time (2 R. 259–260, 281; 3 R. 810–811, 812). In the coffee shop Partin met Allen Dorfman (a codefendant in the instant trial), whose company had posted Partin's first federal bail bond (pp. 19–20, *supra*), with whom Partin was personally acquainted (2 R. 259–260; 3 R. 811, 894–895). With Dorfman was a man whose name Partin was shortly to learn was Nicholas Tweel (2 R. 259–260; 3 R. 811, 818).[27] Partin either joined Dorfman and Tweel at their table or they joined Partin at his (3 R. 811, 894). Dorfman started to introduce Partin to Tweel, but Tweel, interrupting, introduced himself to Partin as "Anthony Quinn," and told Partin, in the course of a conversation which followed, that he was in the cigarette vending machine business in New York and West Virginia (2 R. 260; 3 R. 811, 814, 895).

Shortly following this conversation, Partin asked Hoffa (who had in the meantime returned to the hotel from court) if he knew "Quinn." Hoffa at first said he did not, but when Partin described "Quinn" and told Hoffa that he was a friend of Dorfman's, Hoffa said, "Oh, yes. He's up here to help me" (2 R. 260). Later that same afternoon, "Quinn" approached Partin in the lobby of the hotel, laughingly shook Partin's hand, stated that his name was "Tweel," not "Quinn,"[28] and invited Partin up to

[27] Tweel, like Dorfman, was a codefendant of Hoffa's at the Chattanooga trial.

[28] Tweel (according to Partin) explained his original misstatement of his name to Partin with the statement that he had not at that time known who Partin was (3 R. 816).

his room (2 R. 260; 3 R. 816–818, 897). Partin, curious as to why Tweel had initially attempted to conceal his identity (3 R. 815–816, 818), accepted Tweel's invitation (3 R. 816–817).

In his hotel room Tweel told Partin that Dorfman had asked him to come to Nashville, as a personal favor, to "help him set up a method to get to the jury" (2 R. 261; 3 R. 819). Although Partin had not previously told Tweel anything about the charges which were pending against him, Tweel knew about the charges and gave Partin the name of an attorney who he said could make a favorable "contact" for him in New Orleans in connection with them (3 R. 819–820, 897, 900). Partin gathered from the conversation that Tweel thought Partin was a close friend of Hoffa's and was in Nashville "for the same purpose [Tweel] was" (3 R. 897).[29]

[29] Tweel, in his testimony, acknowledged having a conversation with Partin, in Dorfman's presence, around noon on October 22, in the Andrew Jackson Hotel (3 R. 1063–1066). His version of the relevant events differed sharply from Partin's, however. According to Tweel, the conversation occurred in the lobby, not the coffee shop; there were no subsequent conversations in the hotel; Tweel did not introduce himself to Partin; Dorfman introduced the two, and in doing so used Tweel's correct name; Partin, in the conversation (after Dorfman had taken his departure), told Tweel about the "difficulties" he was having with the law—including the 28-count federal indictment and his "bonding problem"—and asked Tweel if he knew "a competent attorney in Louisiana" who could help him; Tweel told Partin about a lawyer whom a friend of Tweel's had recently "successfully used," but whose name Tweel could not recall at the time (3 R. 1063–1066, 1069–1070). Tweel explained a series of subsequent telephone calls between him and Partin (whom he never met again), on subsequent days of the trial, with the statement that the calls were made in connection

Also on the 22d—at what time in relation to the above-described events does not appear—petitioner King made to Partin the remark (see p. 5, *supra*) that "they had a meeting set up on the jury that night" (2 R. 260). And in the evening of the same day Hoffa told Partin that "they was going to get to one juror or try to get to a few scattered jurors and take their chances" (2 R. 425–426).

Partin called Sheridan that afternoon or evening to report the foregoing events and remarks—or such of them as had occurred at the time of the call[30]—and later the same day met and conferred with Sheridan personally (2 R. 286, 287, 371–372; 3 R. 655–669, 781–788, 906–915).[31]

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with an effort by Partin to learn from Tweel the name of the attorney to whom Tweel had referred in their conversation in the hotel; an inquiry by Partin (after Tweel had given him the attorney's name) as to what Tweel thought would be a "fair legal fee" to pay the attorney; and an attempt by Partin to borrow $5,000 from Tweel (3 R. 1066–1067, 1070–1074, 1085, 1088–1089).

[30] It is unclear from the record at precisely what time, or at what point in relation to the events and remarks we have summarized, Partin first called Sheridan (see 2 R. 287; 3 R. 655–657, 784–785).

[31] Between Partin's initial telephone call to Sheridan and their first person-to-person encounter Sheridan went to the lobby of the Andrew Jackson Hotel to have a look at Tweel, concerning whom Partin had reported in their telephone conservation. Partin had told Sheridan that Sheridan would be able to identify Tweel by the fact that he (Partin) would be conversing with him, and that he would be able to tell who Partin himself was from a handkerchief (which he described) which he would be wearing in his pocket (3 R. 657, 658, 660–664, 896). Sheridan's first personal meeting with Partin occurred early that evening, shortly following this incident. Sheridan picked Partin up in his automabile at a point, near

The next day, October 23d, following the incident in Hoffa's suite in which Hoffa told Partin that he might want him to "pass something for him" on his return to Nashville (see p. 6, *supra*), Partin returned to Baton Rouge (2 R. 434, 438). Between that date and December 19 (four days prior to the termination of the Test Fleet trial), when he left Nashville for the last time, Partin made ten additional trips to that city, his stays lasting for periods varying from less than a day to five days, and averaging roughly three days each, as follows (G. Exs. 98–107, 4 R. 1588–1618):

Arrival	*Departure*
Thursday, October 25	Friday, October 26
Sunday, October 28	Wednesday, October 31
Sunday, November 4	Wednesday, November 7
Wednesday, November 14	Thursday, November 15
Monday, November 19	Wednesday, November 21
Tuesday, November 27	Wednesday, November 28
Friday, November 30	Friday, November 30
Monday, December 3	Friday, December 7
Monday, December 10	Friday, December 14
Sunday, December 16	Wednesday, December 19

Periodically during the trial Partin, who by mutual agreement was referred to in his communications with Sheridan by the code name "Anderson," or "Andy" (4 R. 1491–1492, 1558–1559), would call Sheridan, or meet him in person, and report to him

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the hotel, which they had agreed upon in their telephone conversation, took him to Sheridan's apartment, where they remained about an hour, and subsequently dropped him off near the hotel (3 R. 656–657, 661, 664–665, 668, 787–788, 905–915).

anything he had seen or heard which indicated that attempts were being made, or plans were afoot, corruptly to influence the jury (2 R. 286–288, 289, 291–292, 372). They met "many times" for this purpose, once in a theater lobby, one or more times in Sheridan's apartment, and the other times in Sheridan's automobile (2 R. 376–377; 3 R. 657–658, 787–788, 906–911). These reports, all of which were oral, were made pursuant to Sheridan's request that Partin communicate to him "any evidence of jury tampering or other illegal activities" which might come to his attention—which Sheridan told Partin was all that he was interested in (2 R. 271, 291–292, 329, 371–372). Sheridan did not advise Partin "what jury tampering was," nor did he tell Partin more specifically the kind of information he wanted (2 R. 372). Their meetings, when Partin was in town, were "probably on a daily basis" (*ibid.*). As Sheridan received Partin's reports, he would turn the information over to the F.B.I., which would then investigate and seek to corroborate it (4 R. 1574). When the F.B.I.'s investigations established that there was "great substance" to the reports, the court was promptly advised and remedial steps taken—including the proceedings to disqualify jurors Paschal and Fields (*ibid.*).

Sheridan would receive Partin's reports without comment (2 R. 288). He never gave Partin instructions as to actions he should take or refrain from taking or statements he should make or refrain from making (2 R. 287, 297–298, 377), or as to what he should say if he was asked by someone in the defense

camp whether he was furnishing information to the government (2 R. 385). Sheridan, in fact, at no time gave Partin instructions of any kind, nor did Partin ever suggest to Sheridan any courses of conduct to follow (2 R. 377–378).

Partin was neither paid nor promised anything by Sheridan, or by any other representative of the federal government, during the period of his reports to Sheridan (2 R. 296, 383; 4 R. 1211–1212), nor did he have any "duties" to perform for Sheridan (2 R. 287). The government neither supplied Partin transportation nor defrayed any of his expenses (2 R. 327–328), and Partin did not consider himself to be in any sense in the employ of the government (2 R. 297, 328). Although the information which Partin was furnishing was "very valuable" to Sheridan and Sheridan was "naturally interested in obtaining it," Sheridan never asked Partin to remain in Nashville for any particular period of time, not even for a single day (2 R. 329, 379). While Sheridan was sure that the information Partin was furnishing "had some bearing" on Partin's remaining in Nashville to the extent that he did, and Sheridan "was glad that he was there when he was there," the schedule of Partin's arrivals and departures bore no relationship to Sheridan's wishes (2 R. 379; 4 R. 1571). "Mr. Hoffa is the one who told me he wanted me to stick around," Partin testified, "not Mr. Sheridan" (3 R. 873). Sheridan, similarly, testified that Partin "left many times when I wished he could have stayed there" (4 R. 1571).

2. Partin's access to the "quarters and councils" of the defense

During his stays in Nashville Partin, with Hoffa's permission, had regular access to Hoffa's suite at the Andrew Jackson Hotel, where he visited Hoffa each time he came to town. The suite consisted of a large central living or conference room, used by Hoffa and his attorneys (some eight in number[32]) as a place to meet and consult in the evening and when court was not in session; two adjacent bedrooms, one occupied by Hoffa and the other by defense attorney Bufalino; a typing room, where the stenographers worked; and a room used as the temporary headquarters of the international union of which Hoffa was president (2 R. 308–309, 336, 350, 356). Partin also regularly attended court sessions with Hoffa and dined with him at various neighborhood eating places (2 R. 284–285, 305–306). On these occasions Partin frequently saw and occasionally conversed with Hoffa's attorneys and other members of his group (2 R. 281–283, 284–285, 314–315, 316). Towards the end of the trial Partin, likewise with the permission (if not at the request) of Hoffa, used to sit at a table, just outside the Hoffa suite, where he acted as a doorman to keep people from entering the suite without Hoffa's or the attorneys' permission (2 R. 285, 306–307).

[32] Hoffa's attorneys of record at the Test Fleet trial included William Bufalino, James Haggerty, Jacob Kossman, Daniel Maher, and Thomas Osborn (2 R. 330–331, 349, 356, 404, 405–406). Other lawyer members of his entourage, not attorneys of record, during part or all of the trial, included Jacques Schiffer, Morris Shenker, and David Previant (2 R. 335, 360, 363–364).

We summarize in what follows the evidence—much of it conflicting—regarding Partin's relations with the attorneys for the defense at the Nashville trial; his access to the defense's "legitimate" counsels and strategies; the extent to which he reported to Sheridan matters not relating to jury tampering, learned as a consequence of such access; the extent to which Sheridan, in turn, reported such matters to the prosecutors in the Nashville trial; and the use made by the latter of the reported events.

a. The government's testimony

i. *Partin.*—Partin testified that he made no effort during the Nashville trial to engage in, or be present at, conversations between Hoffa and his attorneys (or among the attorneys themselves) in which the case on trial was being discussed—otherwise than in such generalities as "how things looked" or "how does it look" (2 R. 271, 282–283, 285–286).[33] He explained that the attorneys "would move you out" when they wished to discuss the case (2 R. 282). He acknowledged that he might occasionally have been present when the case was discussed by the lawyers, but, if so, he "didn't know what they were talking about, because I wasn't interested in what they had to say about the case" (2 R. 283). His only interest, he said, was in

[33] Partin could recall only "ordinary" conversation with attorney Haggerty—nothing specific or detailed (2 R. 281, 314). Attorney Bufalino would occasionally tell him "how things looked" and in addition would discuss football, basketball, and other things of mutual interest having no relation to the case (2 R. 282, 314). Partin sometimes would ask attorney Kossman "how it looked," but aside from criticizing other attorneys Kossman would never give him a direct answer (2 R. 316).

"[t]alking to Mr. Hoffa"—including discussions with him about union and personal matters (*ibid.*)." During the period when he was acting as a doorkeeper he might on occasion have entered the suite to get someone or something, but he had no recollection of "the case being discussed" (2 R. 285–286). He did not know whether he was ever present when the lawyers were discussing legal authorities which they were preparing to cite to the court the next day, because he "wasn't interested in authorities" (2 R. 289). He never heard any discussions among the lawyers concerning the selection of the jury which sat in the case (2 R. 302).

Partin never pretended to Hoffa to be helping him in the preparation of his case (2 R. 295). He recalled seeing some charts (later submitted as defense exhibits) in the suite, but he had no interest in them, and if he did anything to assist in their preparation it was of such a minor nature that he had no recollection of it (2 R. 291, 303). If he ever took the charts out to be printed, he did not know what he had (2 R. 316). He saw certain persons in the lobby of the hotel who, he later learned, were defense witnesses, but he did not know at the time that they were to be witnesses (2 R. 310, 311–312). He did not think he had ever reported to Sheridan anything told him by an attorney, because Sheridan "wasn't interested in what the attorneys said," nor did he report every conversation he had with Hoffa (2 R. 291–292, 297).

[34] The "personal" matters which Partin discussed with Hoffa included the question of whether Hoffa had "doublecrossed" him in the matter of his federal bail bond (3 R. 748).

ii. *Sheridan.*—Sheridan testified that the "vast majority" of the items of information reported to him by Partin related to the "comings and goings of people," jury tampering efforts, and happenings which, whether they were illegal or not, seemed to Sheridan to involve unethical or improper conduct (2 R. 372–373, 392–393). There were, in addition, other items of information, "very minimal" in amount, which related "just generally to the trial"—such as comments by Hoffa as to how he felt "the day had gone" in court, when he thought the case would go to the jury, and the like—and some "very small bits" of conversations of or comments by attorneys (2 R. 372–373, 378). Partin never furnished Sheridan with copies of documents and never told Sheridan that he had access to documents; nor did Sheridan ever inquire whether he had such access (2 R. 382–383).

On one occasion Partin reported that a group of people were being interviewed by Mr. Bufalino and that Bufalino "was going over" some written "questions and answers" with them. Sheridan knew at the time, independently of Partin, that the persons involved were some truck drivers who "were being placed on the stand as [defense] witnesses." (Sheridan did not think Partin knew who the persons were.) It was Sheridan's understanding from what Partin told him that Bufalino had written out the questions and answers and told the witnesses to "memorize them." Partin did not furnish Sheridan with copies of the questions and answers (2 R. 389, 393).[35] This

[35] Partin testified that he had no recollection of this incident (3 R. 1012–1013).

incident was evidently the principal matter, not relating to jury tampering, which appeared to Sheridan to involve improper or unethical conduct.

Some of the information which Partin reported to Sheridan was reported by Sheridan to James Neal, the chief government attorney at the Nashville trial, and to other members of the prosecution staff (2 R. 374–375). The "matters relating to the trial" which were so reported consisted of, and were limited to, "[a]ll of the matters concerning what appeared to be efforts to approach the jury" and "[s]ome of the matters which in [Sheridan's] mind were improper or unethical" (2 R. 374).

b. The defense's testimony

Six of the attorneys who assisted Hoffa during the Nashville trial testified at the first hearing on the motion to suppress in the instant trial regarding their recollections of Partin's conduct and activities during the earlier trial. In addition, Hoffa himself, though he did not testify on the motion to suppress, gave testimony pertinent to the subject in the course of his appearance as a witness on his own behalf at the trial proper. We summarize below the substance of these witnesses' testimony.

i. *Bufalino.*—Attorney William Bufalino testified that he had many discussions with Partin during the Nashville trial concerning the "strategy" which should be adopted by the defense in that case (2 R. 331, 336). These "centered * * * around" information which was to be shown on some charts which the defense proposed to introduce in evidence as exhibits (2 R.

331). On one or two occasions Partin "worked on" such a chart and told Bufalino he knew a place where the chart could be printed (2 R. 336).

Bufalino saw Partin in the Hoffa suite on "several" occasions while discussions among the lawyers were in progress (2 R. 336–337; 4 R. 1409–1410, 1428). During the early part of the trial, while the jury was being selected, Partin was "in and out of" discussions among the lawyers relating to motions challenging the jury panel on the ground that it did not represent a proper cross-section of the community (2 R. 335). Later, as the trial proceeded, Bufalino, who had "charge of the files" in the case, would sometimes show a file folder to Partin and explain to Partin, as the latter perused it, "what our strategy was" in reference to it (2 R. 336). Once or twice, as Partin was walking with some of the lawyers from the hotel to the courthouse or returning to the hotel after a day's session, Bufalino discussed with Partin the "various questions" involved in the case, told Partin the "various things" he was planning to interrogate a witness about, and made such observation as that "the government actually had no case" or that there was "absolutely nothing to" the government's position on some point (2 R. 335–336).

Bufalino referred in particular to an incident in which he interviewed some prospective defense witnesses, truck drivers, in Partin's presence. As Bufalino questioned the witnesses, he made notes which were typed up in question-and-answer form. Bufalino gave the typed questions and answers to the witnesses and asked them to make any changes in the

answers which might be necessary in the interest of accuracy. Partin helped Bufalino staple the typed questions and answers together and pass them around to other lawyers who were present during the interviews (2 R. 333–334, 340–342; 4 R. 1416–1417, 1429–1430). On the following day, after Bufalino had interrogated one of the witnesses on direct examination in court, Mr. Neal, the prosecutor, asked the witness on cross-examination if it was not true that he had been "supplied with questions and answers as to what [his] testimony should be" (2 R. 334)."

Bufalino further testified that, while examining this witness at the trial, he (Bufalino) was "about to get into an avenue of questioning" which he and other defense attorneys had discussed the night before in the Hoffa suite in the presence of Partin. As soon as Bufalino said, "Now, Witness, I bring you back to 1953" (by which introductory words the attorney

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" The relevant exchange between Neal and the witness, a man named Sammut, as reflected by the Test Fleet transcript, was as follows (4 R. 1586; 2 R. 416–417):

* * * * *

Q. Did they [defense counsel] give you anything to read, Mr. Sammut?

A. No, sir, not even a newspaper.

Q. Not even a newspaper. I am not talking about newspapers. I am talking with respect to your testimony. Did they give you anything to read with respect to your testimony?

A. After I talked to them.

Q. They gave you written questions and answers, didn't they?

A. The questions that they asked me and the questions that I answered.

* * * * *

intended to get into the area of questioning which had been discussed on the occasion in question), Mr. Neal objected, on the ground that counsel was "getting to a different area." Bufalino inquired of Neal how Neal knew what Bufalino was going to ask, since "all [Bufalino had] said was 1953," to which Neal replied, "I am psychic" (2 R. 334–335; 4 R. 1417)."

On one evening during the trial Bufalino, while in the Hoffa suite, received a telephone call from Partin in which Partin, who had attended a union meeting that night, informed Bufalino that the F.B.I. was following him and asked Bufalino's advice. Bufalino asked attorney Morris Shenker, who was in the suite at the time, to speak to Partin. Shenker told Partin that he should simply go about his business and not worry about the matter (2 R. 338–339).

ii. *Haggerty.*—Attorney James Haggerty testified

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* The pertinent incident, as reflected in the minutes of the Nashville trial, was as follows (4 R. 1584; 2 R. 415):

* * * * *

Q. [by Mr. Bufalino] I take you back to December of 1953, and I ask you whether or not—

Mr. NEAL. Your Honor, may I object to the further line of questioning and ask to take something up with the court. I think I can point out the line of questioning. I think it is irrelevant. I think the court has ruled upon it and I wonder if we could discuss this. It might save some time.

Mr. BUFALINO. Have you been listening to our conversations? How would you know what I am going to ask this witness.

Mr. NEAL. I am psychic.

Mr. BUFALINO. Psychic or psycho?

Mr. NEAL. If it was December of 1953 I think I know the line of inquiry.

* * * * *

that frequently during the Nashville trial Hoffa and his attorneys held evening conferences, in the living room of the Hoffa suite, at which "the strategy to be employed the following day" would be discussed and decisions made as to which attorney would examine the witnesses. Various questions and "methods of approaching the examination" would be suggested and sometimes the "law applicable" to a particular situation would be discussed (2 R. 349–350). On "quite a number of these occasions"—"more than half a dozen"—Partin would be present at these conferences, or portions of them, sitting at the large round table, "usually engaged in shuffling cards" (2 R. 350). The occasions on which Partin was present included one on which the attorneys were discussing the "selection of the jury" and one on which they discussed the situation arising out of the disqualification of juror Paschal (2 R. 352). Haggerty also observed that Partin was present on an occasion when Bufalino was questioning a prospective witness (2 R. 351).

Haggerty, "for all practical purposes," never had a discussion with Partin, whom he considered "in the way" (2 R. 351). On more than one occasion Haggerty voiced to his associates the opinion that the room in which their conferences were held "was bugged." He reached this opinion, he said, because on several occasions, when "something was designed to take the government by surprise," it seemed to him that the government had "advance notice and * * * met it in stride" (2 R. 350–351). Haggerty acknowledged on cross-examination that he could not think of

any particular motion by which the defense sought to "take the government by surprise" (2 R. 353).

iii. *Kossman.*—Attorney Jacob Kossman testified that Partin, during the trial, "was continually present in the corridor that led to Mr. Hoffa's office," that he was often in the Hoffa suite itself, and that at times he acted as "a doorman." During the times when Partin was in the corridor, typists—"the overflow from the office itself"—would be typing there (2 R. 356). On 15 or 20 occasions he saw Partin in the hotel coffee shop while the attorneys would be having breakfast and discussing legal matters related to the trial (2 R. 357). Partin heard Kossman "criticizing the other lawyers" and had as much "access to any piece of paper" in the Hoffa suite as Kossman had (2 R. 357–358). He was in and about the suite during the occasions on which two of the jurors, Tippens and Paschal, were "being discharged," at which times papers were being filed by the defense arising out of the incidents in question (2 R. 358–359).

iv. *Maher.*—Attorney Daniel Maher testified that Partin was "in and around" the Andrew Jackson Hotel during the *voir dire* examination of the prospective jurors, when drafts of questions which the defense proposed to ask the jurors were being distributed to the different defense attorneys (2 R. 405). Maher "kn[e]w," on the first day of the trial, that there was a "serious security leak" somewhere in the defense camp, which he called to the other attorneys' attention. His awareness of the leak arose from the fact that attorney Thomas Osborn, while conducting the *voir dire* examination, "would ask some 10 or 15

questions" without objection by the government, following which, "before Mr. Osborn got to the next question Mr. Neal would be on his feet with an objection." This happened, Maher said, two or three times on the first day of the trial (2 R. 406). The incidents led Maher to make inquiries as to who Partin was and what his relationship was to defense personnel. Either Hoffa or Bufalino assured Maher that Partin was "with us" and "all right" (*ibid.*).

Thereafter, during the remainder of the trial, Partin was present in the Hoffa suite "virtually every day" as well as during the "nightly meetings" of the attorneys (2 R. 406, 407–408, 410–411). As the trial progressed, Maher said, the attorneys became concerned about "the seemingly uncanny ability of the government to anticipate our moves." For instance, he testified, the attorneys, on a given evening, would prepare a "line of questioning" intended to be developed in court on the following day, only to find, on the following morning, that the government would be "ready * * * with a memorandum" opposing their plans. Such incidents caused the attorneys to try to determine whether their rooms "were bugged," but their efforts in this respect were unsuccessful. They then gave consideration to the possibility that someone was eavesdropping in the corridor. It was at this time that Partin started to act as a guard outside the door to the Hoffa suite, stopping people from going in until they explained what their business was (2 R. 406).

Partin was present, Maher further testified, during Maher's interviews with certain prospective defense witnesses—some of the truck drivers previously men-

tioned (2 R. 408–409). Partin was inquisitive as to the facts which the attorneys proposed to develop. He was particularly anxious to know what Mrs. Brennan, a defense witness, was going to testify to. Maher told Partin the substance of her anticipated testimony and informed him that the defense was prepared to support it with documentation. Partin wanted to know how Hoffa "was going to explain his investments" in certain companies. Maher told him what Hoffa's pertinent testimony was to be. Partin also asked Haggerty what "Jimmy's story" was going to be as to "how he got this money for the investments." He was, however, rebuffed by Haggerty, who advised him that he never discussed such matters except with his clients (2 R. 409).

On cross-examination, Maher was challenged by Neal to point to a single example, from the Nashville trial transcript, of an objection by Neal to a question by defense counsel (during the *voir dire* proceedings) before counsel had had a chance to articulate it (2 R. 411)—Maher's asserted basis for his original suspicion as to the existence of a "security leak" in the defense camp (pp. 49–50, *supra*). Maher could not do so (2 R. 412; 3 R. 824, 1041).

v. *Previant and Shenker.*—Attorney David Previant testified that he observed Partin frequently in and about the Andrew Jackson Hotel during the trial; that sometimes he would be seated at the conference table in the Hoffa suite during discussions among the attorneys and at other times he acted as "Sergeant-at-Arms" just outside the door; and that he had at all times "ready access" to the files and offices (2 R. 361–

362). Attorney Morris Shenker's only pertinent testimony related to his telephone conversation with Partin, also testified to by Bufalino (p. 47, *supra*), in which he advised Partin as to his rights on the occasion when Partin reported that the F.B.I. was following him (2 R. 364).

vi. *Hoffa.*—Hoffa testified that Partin "invited himself" to Nashville for the purpose of discussing with Hoffa his (Partin's) "personal problems," arising out of the fact that he had "some six indictments pending" against him, and to plead with Hoffa not to place his local union in trusteeship (4 R. 1358–1359). They first discussed the matter at a meeting held during the second week or towards the end of the first week of the trial (4 R. 1359). Thereafter Hoffa saw Partin "on a sporadic basis" during the trial (4 R. 1396). Although Partin was "persistently * * * wanting" to meet with Hoffa and renew the subject of their original discussion, Hoffa, because of the pressures of his own trial and his preoccupation with his defense, was unable to accommodate Partin in his wish until one evening near the end of the trial, when Hoffa and Bufalino sat down with Partin and had a "full discussion" of the latter's problems and difficulties (4 R. 1361–1362). Hoffa was shocked at the extent of Partin's difficulties and threatened to expel him from the union if it was true, as had been alleged, that Partin had smuggled arms to Cuba (4 R. 1362). The upshot of the meeting was that Partin "blew up" and "stormed out of the room" (4 R. 1362–1363). Hoffa did not recall seeing Partin again in Nashville "other than maybe a glimpse in the Cof-

fee Shop or a glimpse in the lobby" (4 R. 1363). For a period during the trial, prior to this final meeting, Partin, when he was in town, used to sit occasionally as a doorkeeper outside the Hoffa suite, to see that no unauthorized person listened to the conversations being carried on within (4 R. 1363–1364). Hoffa could not state who asked Partin to perform this task (4 R. 1397).

C. EVENTS AFTER THE NASHVILLE TRIAL

1. Payments to Partin

Partin, who was neither paid nor promised anything by any representative of the federal government either prior to or during the Nashville trial (2 R. 296, 383; 4 R. 1211–1212), acknowledged at the conclusion of his direct testimony before the jury, in response to inquiries by government counsel, that he had been indirectly reimbursed by the government, in part, for expenses which he had incurred following that trial—arising out of trips he had taken to various cities to confer with government officials in preparation for the instant (Chattanooga) trial. He testified that he had attended such meetings in Nashville, Columbia (Tennessee), Birmingham (Alabama), and New Orleans; that payments for expenses incurred on these trips had been made by the government to his wife; and that the government still owed him money for such expenses (2 R. 534–535; and see, for his testimony on cross-examination on this subject, 3 R. 876–879, 915–934, 993–1008).

These payments were fully described in the testimony of Grimsley, in whose name the government

checks were drawn and who exchanged them for cashier's checks drawn to the order of Mrs. Partin (4 R. 1194–1204, 1209–1224, 1230–1235). Grimsley testified that in July 1963—*i.e.*, more than six months after the termination of the Nashville trial—payments began to be made to Mrs. Partin at Partin's request (4 R. 1200–1203, 1211–1214). These payments—which totaled $1,200 (4 R. 1212)—were made to reimburse Partin for expenses incurred by him on trips he had taken at the government's request (4 R. 1213). The payments were made at the rate of $300 per month for four months (4 R. 1194–1196, 1199, 1212, 1217–1218, 1221–1222). The money was taken from a "confidential fund" authorized by law (4 R. 1231–1234, 1629–1630; Public Law 87–843, approved October 18, 1962; and see Public Law 88–245, approved December 30, 1963). The reason the payments were made through Grimsley as an intermediary, rather than to Mrs. Partin directly, was to protect Partin's identity as a source of information; the government "did not want to expose this man at that time" (4 R. 1215).

Before the first $300 check was sent to Mrs. Partin, Partin had incurred expenses on trips made to Atlanta, Georgia, and to Alabama at government request (4 R. 1221). Partin kept Grimsley advised of the trips he had taken and Grimsley computed Partin's expenses at standard per diem and mileage rates (4 R. 1218–1219, 1221–1222, 1630). No attempt was made, however, to make the amounts of the checks correspond exactly with Partin's expenses as the expenses were incurred. The request for authority to make the

payments—a memorandum from Sheridan to the Administrative Assistant Attorney General dated July 3, 1963—requested the payment of flat sums of $300 per month through November of that year (4 R. 1233, 1629–1630), and the actual payments were in the round amounts indicated. Grimsley acknowledged that the accounting procedures followed were "not * * * very close or accurate" (4 R. 1221). The payments to Mrs. Partin were nonetheless, "[t]o a degree," adjusted to Partin's expenses (*ibid.*). Grimsley explained that, since Partin, prior to the initial payment or payments, had already "made several trips around the country" for which he "had not been reimbursed in any form," "any monies that were going to him were already owing to him" (4 R. 1234). Grimsley "calculated the figures on a sheet" and submitted them to Sheridan (4 R. 1223). An itemized expense account, prepared by Grimsley shortly before the start of the instant trial (4 R. 1230–1231), was introduced into evidence (Ex. 154, 4 R. 1629–1631). This reflects a total of $1,543.47 in expenses incurred by Partin, a credit to the United States in the amount of $1,200 (the payments made to his wife), and a balance of $343.47, indicated as still "[o]wed by Gov't"[*] (4 R. 1630).

2. Partin's federal indictment

The federal indictment on which Partin was awaiting trial at the time of the Nashville trial (see p. 13,

[*] This balance was exclusive of Partin's witness fees, arising out of his appearance at the Chattanooga trial itself, which were still unpaid as of the date of Grimsley's testimony (4 R. 1214).

supra) was still pending as of the time of the trial in the instant case, in the early months of 1964 (4 R. 1312–1313, 1441–1444). Of six continuances which had been granted in that case, two had been at the request of Partin's counsel and four had been at the request of the United States (4 R. 1313–1314). Of those granted at the government's request, some had been attributable to the press of other business (4 R. 1314), particularly to the heavy schedule of Mr. Duffy, the Assistant United States Attorney in charge of the case, who had not had time to answer various preliminary motions filed on Partin's behalf (4 R. 1302, 1313–1314, 1443–1444). The last continuance reflected by the docket entries (granted at the request of the United States) had occurred on or about December 7, 1962 (4 R. 1314, 1443–1444). The last docket entry, dated March 29, 1963, reflected that the transcript of prior proceedings in the case had been filed on that date (4 R. 1444). The United States Attorney testified that there were open cases on his docket which were older than the Partin case (4 R. 1313).

3. State criminal proceedings involving Partin

We include under this head a brief summary of actions taken, since the Nashville trial, in various State criminal proceedings in which Partin has been involved. We do not suggest that there is any connection between these proceedings and Partin's role as an informer to the federal government during the Nashville trial; quite to the contrary, we deny that there exists any such relationship. In view, however,

of petitioners' contrary suggestion (Pet. Br. 20–21, 28, 60), we set forth at this point the relevant facts of record.

As noted at p. 19, *supra*, n. 16, the Louisiana kidnapping charge on which Partin was indicted on September 8, 1962, was dismissed on December 12, 1963, pursuant to a *nolle prosequi* entered by the prosecution when the mother of the children involved refused to testify against her husband, the principal in the case.

Some time in early 1963 (after the termination of the Nashville trial), Partin was indicted by a Louisiana State grand jury for battery and, contemporaneously, for perjury arising out of his testimony before the grand jury in connection with the alleged battery (2 R. 322, 598; 4 R. 1342–1343). He was thereafter tried on the battery charge and acquitted (4 R. 1343). The perjury charge was then nol-prossed (2 R. 322; 4 R. 1343) for the reason that, as District Attorney Pitcher testified, "[w]hen they found him not guilty of committing the battery [illegible] certainly, couldn't be tried for lying about having committed it" (4 R. 1343).

A Louisiana State indictment against Partin for forgery, returned October 24, 1961, had apparently not been brought to trial as of the time of the trial in the instant case (2 R. 591–592, 593–594; 3 R. 801). This charge, according to Partin, pertained to the alleged forgery of a union "withdrawal card," on which he had been subsequently exonerated by his international union (2 R. 591–592, 593–594).

Partin acknowledged on cross-examination that he had been indicted for manslaughter in connection with a highway accident in Alabama (2 R. 635–636; 3 R. 801; 4 R. 1346). The indictment was apparently returned on September 26, 1962 (4 R. 1346). The record does not reflect what subsequent action was had in this matter.

III. THE TRIAL COURT'S FINDINGS

At the conclusion of the initial hearing on the motion to suppress Partin's testimony, the trial court denied the motion with the following statement (2 R. 419):

> The Court is of the opinion that the motion to suppress the testimony of the witness Mr. Partin should be overruled, having observed the manner and demeanor of the witness on the witness stand, and the testimony of the witnesses, I would find that there has been no interference by the government with any attorney-client relationship of any defendant in this case.
>
> I would further find that the government did not place this witness Mr. Partin in the defendants' midst or have anything to do with placing him in their midst, rather that he was knowingly and voluntarily placed in their midst by one of the defendants.

These findings were amplified somewhat in the court's memorandum opinion denying motions for a new trial (1 R. 131–150), in light of petitioners' claim that the findings had been affected by the transcriptions of the telephone conversations between Partin

and Hoffa of October 8 and 18, 1962 (pp. 20–31, *supra*), which had subsequently been introduced into evidence. In answer to this contention the court observed (1 R. 144–145):

> It is contended that one of the findings of fact of the Court with respect to the motion to suppress was rendered incorrect by subsequent evidence in the case. It is contended that the telephone transcriptions of the telephone calls between Partin and Hoffa on October 8 and 18, 1962, established that the defendant Hoffa did not invite Partin to Nashville. The telephone transcriptions reflect that the defendant Hoffa agreed to an appointment to see Partin in Nashville. Even if the defendant Hoffa did not initiate the invitation of Partin to come to Nashville, but rather Partin solicited the invitation, this does not in any way alter the Court's finding that the Government did not place or keep Partin with the defendant Hoffa. Neither does it in any way relate to or in any way alter the Court's finding that there was no illegal interference with the right of the defendant Hoffa to representation by counsel. The Government requested of Partin only that he report information of jury tampering or other illegal activity of which he became aware. Partin voluntarily furnished such information. He remained in Nashville or returned to Nashville either at the request or with the consent of the defendant Hoffa and not at the instruction of the Government. Finally, the presence of Partin during the course of the Nashville trial and the reporting of information by him does not in any way re-

late to the rights of the defendants in the preparation and trial of this lawsuit. As a matter of law, the motions to suppress were properly overruled.

INTRODUCTION AND SUMMARY OF ARGUMENT

These cases concern convictions on two counts alleging separate endeavors to obstruct justice in a 1962 federal criminal trial in which petitioner Hoffa was the sole defendant. The endeavors in which these petitioners participated are not, however, the only ones committed in the course of that singular trial. Two other separate attempts at achieving the same unlawful objective were alleged and proved in *United States* v. *Bell,* 351 F. 2d 868 (C.A. 6), certiorari denied, 383 U.S. 947, and in *United States* v. *Medlin,* 353 F. 2d 789 (C.A. 6), certiorari denied, 384 U.S. 973. Also significant, we believe, is the fact that there were sufficient indications of other attempts during the same proceeding to warrant grand jury indictments alleging five additional endeavors involving another six defendants.[39] The defendants in those cases were tried and acquitted, and we do not, of course, impugn those acquittals. We cite the total statistics, however, showing that allegations were made against a dozen defendants on

[39] Count 4 of the present indictment (2 defendants); Count 2 and 3 of the indictment in *Osborn* v. *United States,* 350 F. 2d 497 (C.A. 6), certiorari granted, 382 U.S. 1023; count 2 of the indictment in *United States* v. *Bell,* 351 F. 2d 868 (C.A. 6), certiorari denied, 383 U.S. 947; and the indictment in *United States* v. *Frazier, et al.,* Crim. No. 13,387, M.D. Tenn. (3 defendants).

nine separate endeavors and that six defendants were convicted on four of these charges, to demonstrate the magnitude of the task with which law-enforcement agencies were confronted in attempting to preserve the integrity of the 1962 trial.

The sole issue on which this Court has granted certiorari in these cases concerns the legality of the evidence obtained by the government from Edward G. Partin, a close associate of petitioner Hoffa, who had many conversations with him during the 1962 trial. As we demonstrate in our Argument, the information submitted by Partin enabled the government to collect sufficient evidence during the trial to effect the substitution of two jurors whose families had been corruptly approached by the defendants in this case. Although Partin's information was of evidentiary value in the trial now under review only with respect to petitioners Hoffa and King, we do not contend that the evidence introduced against the other petitioners would have been unearthed without the information supplied by Partin. Indeed, we agree that, were it not for Partin's disclosures, the endeavors alleged in this indictment would have escaped detection altogether. For it was only because Partin advised the government that petitioner King was planning a corrupt approach to juror Paschal that federal agents conducted the observations which enabled them to establish that the meeting had taken place. And it was only because Partin reported that juror Fields had been approached through petitioner Campbell that investigating agents were ultimately able to establish how the approach had been made.

Our Argument discusses, in considerable detail, each of the constitutional objections asserted to the admissibility of Partin's testimony. For the reasons stated, we believe it clear that the evidence violated no constitutional or other rule of admissibility, and that the judgments of conviction were properly affirmed by the court of appeals. Beyond petitioners' formal constitutional challenge, however, is an attack on the fairness of the method used by government agents in detecting the offenses of which petitioners stand convicted. We submit that the method employed was proper and that, indeed, in the unique circumstances of this case, it constituted the only practical means of preserving the integrity of an ongoing federal trial which was being subjected to sweeping attack by corrupt influences.

Our basic argument does not depend on the exigencies or practical necessities of any particular case. Certainly, members of any society run the risk that the person to whom they address an otherwise unprivileged statement may repeat it. That risk, as Mr. Justice Brennan observed in *Lopez* v. *United States*, 373 U.S. 427, 450, "does no more than compel them to use discretion in choosing their auditors, to make damaging disclosures only to persons whose character and motives may be trusted." And it is that risk which this case, stripped to its essentials, involves.

It is true, of course, that petitioner Hoffa was engaged in the defense of a criminal trial at the time when he made the incriminating statements which were promptly repeated by their intended auditor to a government official. The fact that Hoffa was then

a defendant on trial created a risk that privileged communications, as well as unprivileged ones, might be heard and repeated to the government. But there was, as we demonstrate, no purpose and no effort on the part of government officials to hear what was privileged, and the government's sole request was that evidence of illegal activity—clearly unprivileged matter—be reported.

The basic question of fairness is then reduced to whether the government was obliged, because of the risk that confidential communications might be repeated, to direct its informant to stay away. That risk—*i.e.*, that the government might, notwithstanding its severely limited request, receive forbidden information concerning defense secrets—must, in any evaluation of what was "fair" or "proper," be weighed against the countervailing risk—*i.e.*, that without the reports of the informant the administration of justice might successfully be obstructed. There was, in the circumstances of this case, substantial and immediate corroboration for the informant's reports that a broad assault would be made on the jury which had been selected to try the charges against petitioner Hoffa. If that trial was not to be reduced to a mockery, it was necessary for the government to continue to receive reports of unprivileged communications concerning the progress of the illegal efforts. This need was demonstrated by what, in fact, happened during the trial. For the two attempts discovered during trial—*i.e.*, in time to substitute alternates for the jurors involved—were detected only because of the informant's disclosures.

I

We make two alternative responses to petitioners' claim that Partin's testimony should have been suppressed by the district court as the product of a violation of the Sixth Amendment's assistance-of-counsel clause. Our simplest and shortest answer is that if the precise testimony at issue is examined, it becomes indisputably clear that it was not obtained as the result of any Sixth Amendment violation; the challenged testimony consisted entirely of unprivileged statements made by petitioners Hoffa and King to Partin (or to each other in his presence) which did not relate, in any way, to legitimate trial strategy. These remarks could lawfully have been repeated by any person, including Hoffa's attorney, and they were not "tainted" in any manner by access which Partin might also have had to attorney-client conferences.

That answer sufficiently, in our view, disposes of petitioners' Sixth Amendment argument and makes it unnecessary for this Court to consider whether a conviction arising out of the 1962 Nashville trial would have been vulnerable to constitutional attack. However, petitioners' assertions that the government was guilty of misconduct during the 1962 proceeding and the many serious related allegations in petitioners' brief call for a response. In our Argument we have, therefore, first treated the question of the constitutional validity of the 1962 Nashville trial. We believe that there was no Sixth Amendment violation in the course of that trial because (1) the government was not responsible for Partin's arrival or continued

presence in Nashville; (2) government agent Sheridan acted properly when, on receiving almost immediate independent corroboration of Partin's reports, he requested only more evidence of illegal activity in order to preserve the integrity of the ongoing trial; and (3) no privileged information was sought by the government and, with a single unintentional exception, none was obtained.

The district court's findings of fact, which were made after considering the demeanor of the witnesses, fully support its conclusion that there was no interference with the attorney-client relationship during the 1962 trial. Petitioners' present allegations to the contrary conflict with the court's findings and are unsupported by the record.

After discussing the 1962 trial in substantial detail, we turn to our argument that, irrespective of the constitutional sufficiency of that proceeding, the testimony here at issue was free of "taint." The critical question is not, in other words, whether the government ever engaged in impermissible conduct *vis-à-vis* any one or more of these petitioners but whether the evidence challenged here was obtained "by exploitation of that illegality * * *." *Wong Sun* v. *United States,* 371 U.S. 471, 488. Partin's testimony was plainly not the product of any alleged violations of the privacy of attorney-client conferences or strategy meetings. And the consistent course of this Court's decisions establish that it was not to be excluded merely "as an indirect mode of disciplining misconduct." *United States* v. *Mitchell,* 322 U.S. 65, 71.

II

Petitioners' claim that the Fourth Amendment was violated when Partin reported to the government what he had been told in petitioner Hoffa's suite rests on a basic misunderstanding of the protection of that constitutional provision. The Fourth Amendment does not cloak with a privilege all statements made in a home or in any protected area. It safeguards the privacy of a place or of an individual's body against unwanted intrusion by the government. But the occupant of a home (or of a hotel room) does not rely on that privacy when he confides in someone whom he trusts; he relies only on the friend's faithfulness. That reliance is the same no matter where the conversation occurs. And if the listener is merely a pretended friend, he violates no privacy of the home by repeating what he has been told. A statement is, in this respect, quite unlike a document. Whereas the latter may be entrusted to the privacy of an enclosure protected by the Fourth Amendment, a statement is so entrusted only to the extent that eavesdroppers are excluded. The person to whom a statement is made does not, therefore, "seize" it in violation of the privacy of the location where the conversation occurs even if he has gained access to those premises by deception.

III

The Sixth Amendment confers no right on an accused to demand that the government arrest him as soon as it has probable cause to do so. Nor does it

prohibit a government informant from speaking with someone who has not been arrested or indicted to learn the details of an offense that is in the process of being committed or that has just been completed. In *Miranda* v. *Arizona*, 384 U.S. 436, 444, this Court made it entirely clear that the language in *Escobedo* v. *Illinois*, 378 U.S. 478, which distinguished between the investigatory and accusatory stages of a criminal proceeding for Fifth and Sixth Amendment purposes did not impose pre-arrest restrictions on investigations. Petitioners' claim that statements made to Partin after it was clear that petitioners were involved in an unlawful conspiracy were elicited in violation of the Fifth and Sixth Amendments is, therefore, plainly unsound.

IV

There is no merit to the general assertion that the use of Partin's testimony deprived petitioners of liberty without due process of law. All the considerations bearing on Partin's credibility were submitted to the jury, and it chose to believe him. The law has always recognized that testimony of this kind is acceptable and, in certain kinds of crimes, necessary if the guilty are to be punished. No departure from that principle is justified here.

ARGUMENT

Petitioners challenge the admissibility of Partin's testimony on the grounds that it was the product of violations of the Fourth, Fifth and Sixth Amendments. In this Court, petitioners' initial contention is based on the Fourth Amendment (Pet. Br. 32–44), and their argument is, in this respect, similar to that

made by the petitioner in *Lewis* v. *United States*, No. 36, this Term, and is related to the argument made by the *amicus curiae* in *Osborn* v. *United States*, No. 29, this Term. In the court below, as well as in the district court, petitioners relied principally on the claim that Hoffa's Sixth Amendment right to the effective assistance of counsel had been violated and that Partin's testimony should have been excluded as the "fruit" of this violation. That contention is now asserted by petitioners as a subsidiary ground for reversal of the convictions (Pet. Br. 44–52).

In our Argument we respond first to the latter contention because its discussion relates not merely to what occurred during the 1962 Nashville trial but to the events which preceded it. We urge that there is no substance to the claim that Hoffa's constitutional right to the effective assistance of counsel in the Test Fleet trial was violated by what the government did before and during the Nashville trial. We also show that, at all events, Partin's testimony during the trial here under review was not the "fruit" of the asserted violations of the Sixth Amendment.

We then turn to the Fourth Amendment claim which, we believe, like the similar claim in *Lewis*, No. 36, this Term, rests on a fundamentally erroneous premise regarding the applicability of the protections of the constitutional provision to circumstances such as those presented by this case. And finally, we discuss petitioners' remaining contentions—*i.e.*, that petitioners Hoffa and King's Sixth Amendment rights with respect to the instant charges were violated

because Partin continued to speak with them after the government had learned of the plans to obstruct justice (Pet. Br. 53–57); that those petitioners' Fifth Amendment privilege against self-incrimination was similarly infringed when Partin obtained incriminating statements from them (Pet. Br. 57–59); and that the government's use of Partin's testimony denied to petitioners the due process of law guaranteed by the Fifth Amendment (Pet. Br. 60–63).

Before turning to a particularized examination of petitioners' constitutional arguments we note one other prefatory matter. While all four petitioners seek to avail themselves of all of the several contentions urged in their joint brief (see Pet. Br. 30–31), and while we agree, as we have previously stated, that the evidence upon which Campbell and Parks were convicted was obtained by following "leads" provided by Partin, it is manifest from this Court's holding in *Wong Sun* v. *United States*, 371 U.S. 471, 491–492, that Parks and Campbell have no standing as regards any of the contentions, and that only Hoffa has standing as to all.

Wong Sun held, in relevant part, that the heroin surrendered by Johnny Yee (to whose home the agents were led by the unlawfully obtained statement of petitioner Toy), while inadmissible as to Toy because of its "tainted relationship" to the information so obtained from Toy, was admissible as to Toy's codefendant and co-petitioner, Wong Sun, because its seizure "invaded no right of privacy of person or premises which would entitle Wong Sun to object to

its use at his trial." 371 U.S. at 491-492. By the same token, *none* of the petitioners' jointly-made contentions are available to Parks and Campbell. Neither of them was a defendant in the Test Fleet trial; therefore, no Sixth Amendment right of theirs (with respect to that trial) could possibly have been violated. Nor, so far as appears, was either ever present in Hoffa's hotel suite, and Partin at no time saw, knew, or spoke to either; therefore, no Fourth Amendment right of theirs, no right of theirs against self-incrimination, and no right of theirs to counsel (in respect of the prosecution for jury tampering) could have been infringed by any action of Partin's.

As regards King, the only contentions which he clearly has standing to make are those relating to the alleged denial of the right against self-incrimination *vis-à-vis* jury tampering and the claimed deprivation of the right of counsel with respect to the prosecution for that offense. He clearly has no standing as regards the alleged improper interference with Hoffa's right of counsel in the Test Fleet prosecution, since he, like Parks and Campbell, was not a defendant in that case. Since King, during that trial, was present at times, with Hoffa's permission, in Hoffa's suite, and since some of King's incriminating statements, testified to by Partin, may have been made in the suite, we raise no question as to King's standing with respect to the Fourth Amendment issue (cf. *Jones* v. *United States*, 362 U.S. 257; and see *Wong Sun*, *supra*, 371 U.S. at 492, n. 18), or with respect to the general claim of denial of due process.

I

THE ADMISSION OF PARTIN'S TESTIMONY VIOLATED NO EXCLUSIONARY RULE BASED UPON THE SIXTH AMENDMENT

In analyzing petitioners' Sixth Amendment claim, it is helpful, we believe, to state the premises from which we begin. Specifically, we do not challenge the holding or underlying principles of the decisions on which petitioners rely most heavily—*Caldwell* v. *United States*, 205 F. 2d 879 (C.A.D.C.), and *Coplon* v. *United States*, 191 F. 2d 749 (C.A.D.C.), certiorari denied, 342 U.S. 926. We agree, in other words, that the Sixth Amendment is violated if the government places an informant in the defense camp during a criminal trial and receives from that informant privileged information pertaining to the defense of the criminal charges. That is true, we believe, because the Sixth Amendment's assistance-of-counsel guarantee can be meaningfully implemented only if a criminal defendant knows that his communications with his attorney are private and that his lawful preparations for trial are secure against intrusion by the government, his adversary in the criminal proceeding. The *Caldwell* and *Coplon* decisions both rested on the principle that the government may not, under the Sixth Amendment, intrude into matters which are privileged or lawfully confidential between a defendant and his attorney. See 205 F. 2d at 881; 191 F. 2d at 759.

On the other hand, we think it is equally clear that the Sixth Amendment does not cloak with a legal privilege every statement uttered by a defendant on

trial, much less statements which are made in furtherance of distinct criminal offenses planned or committed during the trial. An informant is, we believe, at least as free to report and testify about such statements as the defendant's attorney himself. If an attorney representing a criminal defendant is advised by his client that the latter is actively plotting to bribe jurors, the attorney would have the duty and responsibility not simply to try to dissuade the client, but to make known the planned felony to the proper authorities. The client would have no right to rely on his confidential relationship with his attorney as a seal against such disclosure. It is well established that the attorney-client privilege has no application where the communication in issue relates to the commission of a *future* crime. *Clark* v. *United States,* 289 U.S. 1, 15 (*dictum*); *In re Sawyer's Petition,* 229 F. 2d 805, 808–809 (C.A. 7), certiorari denied *sub nom. Sawyer* v. *Barczak,* 351 U.S. 966; *United States* v. *Weinberg,* 226 F. 2d 161, 172 (C.A. 3), certiorari denied, 350 U.S. 933; *United States* v. *Bob,* 106 F. 2d 37, 39–40 (C.A. 2), certiorari denied, 308 U.S. 589; *Fuston* v. *United States,* 22 F. 2d 66, 67 (C.A. 9); 8 Wigmore, *Evidence* (McNaughton Rev. 1961), §§ 2298, 2299. As this Court has observed, "[t]he privilege takes flight if the relation is abused." *Clark* v. *United States, supra,* 289 U.S. at 15.

The shortest answer to petitioners' contention that Partin's testimony should have been excluded because the remarks made to him by Hoffa and King were "elicited * * * in violation of petitioner Hoffa's right under the Sixth Amendment to be free of government intrusion on his Test Fleet defense preparations and

consultations" (Pet. Br. 44) is that Hoffa's and King's remarks, to which Partin testified, fell clearly into the above-described category of unprivileged statements. Partin was, therefore, not violating Hoffa's right "to be free of government intrusion on * * * defense preparations and consultations" when he repeated them to Sheridan and testified about them at trial. We discuss this answer in greater detail at pp. 107–124, *infra*.

There is more to this case, however, than the narrow question whether or not specific evidence was tainted by alleged government misconduct. Petitioners in their brief make sweeping and serious charges of intentional government invasion of defense preparations and accuse government agents of a calculated endeavor to deprive a defendant on trial of the fundamental protections afforded by the Bill of Rights. We are not, therefore, content to rest merely on the argument that Partin's testimony was "untainted." Although a full explication of the facts requires extended discussion, we demonstrate first that there was no misconduct by the government during the Test Fleet proceeding and that, contrary to the allegation of petitioners and the *amici curiae*, the 1962 Nashville trial was not vulnerable to a Sixth Amendment attack.

A. PETITIONER HOFFA'S SIXTH AMENDMENT RIGHTS WERE NOT VIOLATED DURING THE NASHVILLE TRIAL.

1. *The government was not responsible for Partin's presence in Nashville*

At the heart of petitioners' argument that the government violated rights of petitioner Hoffa under the Sixth Amendment at the 1962 Nashville trial

(Pet. Br. 26–30, 44–52) is their contention, reflected in the very wording of the question which they asked the Court to review (see note 1, *supra*), that Partin was "placed" by the government in the quarters and councils of the defense at that trial. The *amici curiae* similarly refer to the "placing" or "planting" of Partin in the defense councils by the government. ACLU *Amicus* Br. 5; Crim. Cts. Bar Assn. *Amicus* Br. 5, 9, 10, 18, 19, 23, 34, 35, 37, 39, 40. The record fails to support this claim and it is contradicted by the trial court's explicit finding that the government *did not*

> place this witness Mr. Partin in the defendants' midst or have anything to do with placing him in their midst,

but that, rather, "he was knowingly and voluntarily placed in their midst by one of the defendants," Hoffa (2 R. 419; p. 58, *supra*).

This critical finding by the court was made at the conclusion of the hearing on petitioners' first motion to suppress Partin's testimony. At that time not all of the evidence germane to the issue had been elicited. But the court, after all of the later, supplementary evidence had been adduced, not only did not depart from, but specifically reaffirmed this finding in its opinion denying motions for a new trial. After noting in that opinion the defense's contention that the transcriptions of the October 8 and 18 telephone calls of Partin to Hoffa "established that the defendant Hoffa did not invite Partin to Nashville," and after observing that the transcriptions "reflect that

the defendant Hoffa agreed to an appointment to see Partin in Nashville," the court stated (1 R. 144; p. 59, *supra*):

> Even if the defendant Hoffa did not initiate the invitation of Partin to come to Nashville, but rather Partin solicited the invitation, *this does not in any way alter the Court's finding that the Government did not place or keep Partin with the defendant Hoffa.* [Emphasis added.]

We have, thus, a twice articulated finding by the trier of the facts, made after it had carefully observed the "manner and demeanor" of the witnesses (2 R. 419; p. 58, *supra*), that Partin was *not* "placed by the government" in the councils and quarters of the defense at the Nashville trial. This finding, as the court of appeals held (1 R. 193–200; see, particularly, 1 R. 198, 200), is fully supported by the evidence.

Our detailed Statement (pp. 13–33, *supra*) summarizes the evidence on this issue. It shows that Partin placed telephone calls to Hoffa several times during the month preceding the beginning of the Nashville trial, and that as a result of these calls it was agreed that the two would meet in Nashville on October 21, 22 or 23. It also shows that Partin's reasons for meeting with Hoffa were altogether personal—that he wished to discuss the cancellation of his federal bail bond and certain union matters—and that he placed the calls entirely of his own volition, without any suggestion or request by agents of the federal or State governments. The evidence also demonstrates that representatives of the federal gov-

ernment first learned of Partin's plans to be in Nashville after he had, on October 18, made the arrangements with petitioner Hoffa. Thereafter a meeting was arranged in Atlanta, where Partin was asked by Grimsley, a Department of Justice attorney, to keep his eyes and ears open while in Nashville and to report any evidence of jury tampering to Walter Sheridan. Partin agreed to do so, and Grimsley gave him Sheridan's telephone number.[40]

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[40] There is no real basis in the record for petitioners' assertion that Grimsley "instructed [Partin] on his duties in Nashville" at their October 20 meeting in Atlanta, just prior to the trial's commencement (Pet. Br. 27, 8–9, 32). It is true that Partin, *in response to a question by defense counsel* as to whether he had been "given any instructions" by Grimsley on the occasion in question, gave an unqualified affirmative reply (2 R. 648; cf. 3 R. 790). It is also true that Grimsley stated at one point, on cross-examination, that Partin, in Nashville, "was following the instructions that I had given him in Atlanta to keep his eyes and ears open * * *" (4 R. 1488). Almost immediately following this testimony, however, Grimsley, in response to further interrogation by defense counsel on the point, gave the following clarifying testimony, which shows that he had previously used the word "instructions" in the loosest of senses and that no more than a "request" was involved (4 R. 1489):

> Q. * * * [Y]ou then directed him to go to Nashville and to keep his eyes and ears open?
>
> A. I didn't direct him. I requested that since he was going would he do this.

See also 4 R. 1212. Daniels too, who was present at the meeting in question, made it unequivocally clear that Grimsley neither gave nor purported to give anything in the way of instructions or directions to Partin, and that all Grimsley did was to *request* of Partin, *if* he saw evidence of illegal activities in Nashville, that he communicate such information to Sheridan (3 R. 1132, 1140):

> * * * Mr. Grimsley asked [Partin] would he keep his ears and eyes open and report any attempts at witness intimi-

Partin thereafter did go to Nashville, arriving around noon on October 22, the first day of the Test Fleet trial. Hearing remarks and statements on that very afternoon and evening indicating that plans were being made corruptly to influence the jury, he called Sheridan and reported what he had heard. He thereafter continued to report statements made to him by Hoffa in this connection during the balance of the trial. Pp. 33–39, *supra*.

It is clear from this recital, we submit, that there is no basis for the claim that the government "placed" Partin in the councils of the defense in Nashville. Partin went to that city to confer with Hoffa for personal and business reasons of his own, and at Hoffa's explicit invitation.[41] It is immaterial, as the

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dation or tampering with the jury. And to report these either to Mr. Grimsley or to Mr. Walter Sheridan.

* * * * * * *

* * * [I]t was put in a way that I would describe as a request.

Particularly in view of this unambiguous testimony by both Grimsley and Daniels that only a "request" was involved, and Partin's own testimony that he had no "duties" to perform in Nashville (2 R. 287), it is evident that Partin, in his above-mentioned affirmative reply to defense counsel's inquiry as to whether he was given "instructions" in Atlanta, was, like Grimsley in his first response referred to above, simply not differentiating between an "instruction" and a "request". The trial court specifically found that no more than a "request" was involved (1 R. 144–145; p. 59, *supra*).

[41] During the call of October 18, Partin reminded Hoffa that he had said he was going to be in Nashville "on the 22nd"—an apparent allusion to a statement of Hoffa's in an earlier unrecorded conversation (p. 28, *supra*). Who initiated the suggestion that they meet in Nashville (rather than in Washington, as had been agreed on October 8) is, therefore, a matter of speculation on which the record is unclear.

trial court observed, whether this invitation was extended on Hoffa's own initiative or was solicited by Partin. It makes no difference, in other words, that Partin may have *asked* to be invited. The only relevant fact is, as the trial court held, that the government had nothing to do with it.

The fact that the calls to Hoffa in which the invitation was made were recorded, by Partin, with equipment supplied him by Daniels, has also no bearing on this case. These calls were two of a large number of recorded calls, made by Partin to various persons over an extended period, in connection with a State investigation which Daniels was conducting in his capacity as a Louisiana law-enforcement official. The federal government had nothing to do with any of the calls. There is no significance, moreover, in the fact that Partin and Daniels apprised the federal government—in the persons of Grimsley and Duffy—of those calls of Partin's which he placed to Hoffa. The federal government had under investigation at the time a serious charge against Hoffa which Partin had made days earlier—and which a polygraph test administered to Partin had shown (or was to show) was apparently not without substance. Grimsley and Duffy were the federal officials to whom this charge had been made known. There was certainly nothing extraordinary in the fact that Daniels, the official in charge of the State's investigation, and the person to whom Partin had initially made his accusations, should have seen fit to keep the federal officials advised of matters of such potential significance to the federal government as the contents of Partin's telephone calls to the subject of his serious charges.

Nor is there substance to petitioners' suggestion (Pet. Br. 6, 20, 28, 60) that the State District Attorney, Pitcher, by recommending that Partin be released on bond on the State kidnapping charges following the early-morning meeting in his office with Partin and the federal officials (whereas he had earlier successfully opposed bail on those charges), was in reality acting in this matter in the interests of the federal government; *i.e.*, that his motive was to secure Partin's release so that he would be available to the federal officials for use as an informer at Hoffa's forthcoming trial. Pitcher explained that, under Louisiana law, the crime with which Partin was charged was non-bailable so long as the children had not been returned unharmed; that Pitcher's sole interest in the matter was the safe return of the children; that when this was accomplished he no longer had reason to oppose the granting of bail and, in accordance with his agreement with Partin, recommended a reasonable bond. He flatly denied that his relevant actions were in any wise motivated by the advancement of any federal interest. Pp. 17–19, *supra*.[42]

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[42] Neither is it true, as petitioners state (Pet. Br. 27), that Partin "started that work [informing] on October 2, 1962, weeks before his first arrival in Nashville * * *." The reference in the record on which petitioners base this erroneous assertion is the following question asked of Grimsley and his answer (4 R. 1201):

> Q. And he [Partin] began being informer to you on the telephone call of October 8. Is that correct? 1962? Or before?
>
> A. That was the basis for it.

In light of Grimsley's testimony that he did not learn of the contents of the recordings until sometime around October 20,

The federal government did not become responsible for Partin's presence in Nashville because he agreed at the government's request on October 20—after he had made all the arrangements to meet Hoffa in Nashville—to report evidence of jury tampering or other illegal conduct to a federal official. In so doing, Partin merely gave formal assent to an obligation imposed on him by law and by his obligations of citizenship. See 18 U.S.C. 4, which makes it a criminal

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1962 (4 R. 1485), it is clear that, by giving this imprecise answer to counsel's imprecise question, he was merely agreeing that Partin began to cooperate with law-enforcement officials during that general period. Indeed, Grimsley's answers to the questions which almost immediately follow the relied-on exchange demonstrate not only that there was no understanding between Partin and the federal government (with regard to informing) as of October 2, but, more importantly, that Grimsley, by his vague answer to counsel's earlier question, really intended to refer to the whole period commencing with his first meeting with Partin as "the basis for" Partin's later becoming an informer (4 R. 1201–1202):

> Q. When he became informer was as you stated October 8 on the phone call that you referred to previously.
>
> A. Well, I met with him in September, late September or early October so he probably started then. I guess you would say late September was the day of——
>
> Q. (Interposing) And you had an understanding with him at that time about his method of operation to a certain extent?
>
> A. There was no understanding at that time.
>
> Q. But you had an understanding that he was to be the informer that you spoke of?
>
> A. Well, he volunteered this information.

Grimsley, in short, by the testimony on which petitioners rely, read in its context, meant simply that Partin's early-October activities, collectively viewed, constituted the "basis"—in the general sense of the term—out of which his subsequent decision to inform on his associates arose.

offense to conceal and not to make the commission a felony known "as soon as possible * * * to some judge or other person in civil or military authority under the United States * * *." And see *Miranda* v. *Arizona*, 384 U.S. 436, 477–478: "It is an act of responsible citizenship for individuals to give whatever information they may have to aid in law enforcement." See also 384 U.S. at 481. ("We also fully recognize the obligation of all citizens to aid in enforcing the criminal laws.") The request by Grimsley was fully justified. Partin had reported that petitioner Hoffa was plotting to commit murder, and a polygraph examination administered to Partin tended to show that he was telling the truth. Although his story may not have sounded probable, it could not, in light of its gravity, be dismissed out-of-hand. And it was not unlikely that an individual who would be prepared to plan a murder might be equally ready to corrupt justice. See also note 63, *infra*.

Finally, the district court found not only that the government did not "place" Partin in the defense camp, but also that it did not "keep" him there (1 R. 144; p. 59, *supra*). This latter finding—*i.e.*, that the government neither instructed nor requested Partin to remain in Nashville during the trial (1 R. 145)—is as fully supported by the evidence as the finding that the government did not initially "place" Partin in the defense camp.

The record establishes that Partin was neither paid nor promised anything by any federal representative

during the period in which he was reporting to Sheridan.[43] The government supplied Partin no transportation and defrayed none of his expenses.

[43] There is no basis for petitioners' claim that the government paid Partin for his informing activities (Pet. Br. 28). The circumstances under which four monthly payments totaling $1,200 were made to Partin's wife, at Partin's request, are fully explained at pp. 53–55, *supra*. These payments, which commenced *more than six months after the termination of the Test Fleet trial*, were made to reimburse Partin (by remittances sent to his designee) for expenses incurred by him in connection with trips to different cities, taken at the government's request, in preparation for the instant trial. It is not true that Grimsley "finally admitted" that the payments "were for the support of Partin's children and not for Partin's expenses" (Pet. Br. 22, 28). Grimsley acknowledged that the payments were in round amounts, of $300 per month, and that these amounts corresponded with the amounts which Partin was at that time sending to his wife for the support of their children (4 R. 1219, 1233). Grimsley, however, never retracted his testimony that the payments were, nonetheless, in reimbursement of Partin for travel expenses. He freely acknowledged that the accounting procedures followed were "not * * * very close or accurate" (4 R. 1221).

With respect to petitioners' contention that the failure to prosecute the various State and federal charges which were pending against Partin at the time of the Nashville trial was to compensate him for his "work" as an informer (Pet. Br. 5–6, 20–21, 28), the facts of record are set forth at pp. 55–58, *supra*. There is no basis for this admittedly—see Pet. Br. 28—gratuitous surmise. Moreover, petitioners are wrong even as regards some of the facts on which they base their conjectures. Of the four State charges referred to, two—those for "assault" (actually battery) and for "perjury" (growing out of the alleged battery)—were not even in existence at the time of Partin's informing activities. They did not arise until sometime in 1963, after the Test Fleet trial had been concluded (p. 57, *supra*). For the reasons for the State's nol-prossing of the perjury charge—following Partin's acquittal of the alleged battery out of which it arose—see p. 57, *supra*. The reasons for the State's nol-prossing of the "kidnapping" charge, and the

He had no "duties" to perform," never suggested any courses of conduct to follow, and never considered himself, in any sense, in the employ of the government. No instructions were given to Partin by Sheridan," nor did Sheridan ever ask him to remain in Nashville for any particular period—not even for

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absence of any connection between the State's decision in this matter and the federal government's interest in Partin, have already been pointed out (see pp. 17–19, 57, *supra*). Petitioners' assertion that "the local Internal Revenue Service agents received orders to refrain from pressing a Federal tax claim against Partin" (Pet. Br. 21) is based purely on hearsay testimony (4 R. 1256–1257).

" There is no substantial basis for petitioners' statement (Pet. Br. 27) that Partin, in Nashville, "did no more and no less than he was told to do" by Sheridan. The record-references cited for this assertion refer merely to testimony by Partin that he did not keep track of the dates and times of the events he reported to Sheridan because Sheridan "didn't tell" him to do so, and because Partin "assume[d]" that Sheridan was doing that (3 R. 700–701, 766). Such testimony hardly supports the claim, implicit in petitioners' statement, that Partin was the government's obedient instrument while in Nashville, at Sheridan's constant beck and call.

" Petitioners' statement that Sheridan "instructed Partin on reporting jury tampering" (Pet. Br. 9) is based on the following testimony of Partin on cross-examination (2 R. 287):

> Q. Did he [Sheridan] give you any instructions with respect to your duties in overhearing things between the various parties in the case?
>
> A. No, sir, I didn't have any duties when it came to that.
>
> Q. Did he give you any instructions?
>
> A. Only if I heard any of [*sic*] jury tampering.

Particularly in light of the Partin's statement that he had no "duties" to perform, and of Sheridan's explicit denial that he gave Partin "instructions" (2 R. 377–378), the fair meaning of Partin's answers to the questions containing these words, it is submitted, was simply that the witness willingly complied with Sheridan's *request* that he inform.

a single day. While Sheridan was sure that the information Partin was furnishing "had some bearing" on Partin's remaining in Nashville to the extent that he did, and Sheridan "was glad that he was there when he was there," the schedule of Partin's arrivals and departures bore no relationship to Sheridan's wishes. It was Hoffa, not Sheridan, who told Partin that he wanted Partin to "stick around." Partin left Nashville "many times when [Sheridan] wished he could have stayed there." Pp. 38–39, *supra*.

We have demonstrated that there is abundant factual support for the district court's conclusion that Partin's presence in Nashville on October 22, when the Test Fleet trial began, and thereafter, was not attributable to any action or request by the federal government. This, we believe, is one of several important distinctions between the facts of this case and the facts of *Caldwell* v. *United States*, 205 F. 2d 879 (C.A.D.C.), where the prosecution, prior to trial, "hired" an informant to discover who was behind the offenses with which Caldwell had been charged. In that case, the undercover employee was, in a very real sense, "placed" in the defense camp by the government; in the present case the informant was in the defense camp for his own and Hoffa's personal reasons.

We recognize, however, that this is not the end of the inquiry. There remains the contention that the government took impermissible advantage of Partin's presence in Nashville and his willingness to report what he heard to the government. In line with our acquiescence in the principles underlying the *Caldwell* and *Coplon* decisions (p. 71, *supra*), we

agree that if the government had seized on the opportunity (which was not of its making) to obtain defense secrets or other privileged information from him, in violation of the *Caldwell* [46] and *Coplon* decisions, a Sixth Amendment violation would have occurred. The government representatives in this case did no such thing. All that was ever requested from Partin, and the overwhelming bulk of the material that was actually obtained, was information pertaining to illegal efforts to obstruct justice, principally by corruptly influencing jurors. It was only because Partin was told of these plans by several persons on the very day that he arrived in Nashville that he communicated promptly with Sheridan. And it was because independent corroboration of the truth of his reports was forthcoming almost immediately that government officials deemed it imperative to continue receiving from him whatever he learned concerning the nature of these efforts.

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[46] In *Caldwell* the informant reported to the prosecution that he had been offered money to negotiate the theft of files from the United States Attorney's office. The prosecution thereupon caused him to "extend his activities" with a view to bringing about the conviction of the persons who were conspiring to steal the files. "In his dual capacity as defense assistant and Government agent," the informant gained free access to the defense's plans. Neither his dealings with the defense nor his reports to the prosecution were limited to the proposed unlawful acts of the defense; they covered many matters connected with the impending trial. The prosecution's initial inhibition against the informant's working for the defense "went overboard." The prosecution received full reports relating to the accused's defense, and the reported plan to steal the files was never carried out. The trial proceeded, with the informant ostensibly continuing to aid the defense but also reporting to the prosecution, and a conviction resulted. 205 F. 2d at 880.

At stake was the integrity of a trial in which the impanelment of the jury had begun. We submit that no constitutional principle required the government, in light of the information and corroboration it had received, to stand back and permit the trial to degenerate into a hollow formality. We also submit that the course followed—to request and receive from Partin only unprivileged information concerning illegal activities, to submit that information to the Federal Bureau of Investigation for further investigative steps, and then to use what had been discovered in moving to disqualify jurors—was the most reasonable of the various alternatives open to government officials.

2. Since Partin's information was corroborated almost immediately and indicated a serious threat to the integrity of the ongoing trial, the government was entitled to ask him for more information concerning petitioners' illegal activities.

Within hours of Partin's arrival in Nashville on the opening day of the Test Fleet trial, he learned from conversations he had with Tweel, King and Hoffa that a conspiracy was in existence corruptly to approach jurors in the case. He reported these matters to Sheridan that same day, October 22,[47] and on the

[47] Partin did not call Sheridan until after he had heard one or more of the incriminating statements which came to his attention that day. Petitioners incorrectly state that Partin, "to the best of his recollection," telephoned Sheridan immediately following his checking in at the Andrew Jackson Hotel, to tell Sheridan "I am here" (Pet. Br. 9). At the page of the record cited for this statement, Partin testified that, while he "may have" called Sheridan prior to his initial report of jury tampering evidence to tell him that he had arrived, he "didn't remember" so doing (3 R. 781). It is clear from the testimony of Sheridan that Partin reported evidence of jury tampering to him in their very first conversation (2 R. 371–372).

following day he reported the incident in which Hoffa, striking his back pocket with his hand, had told Partin that he might want him to "pass something" for him on his return to Nashville from Baton Rouge.

The information supplied by Partin to Sheridan on October 22 and October 23, if true, indicated that a massive effort was afoot to bribe or otherwise corruptly influence jurors. Among the remarks made to Partin on that first day in Nashville and, presumably, repeated to Sheridan that evening or on the following day, were Tweel's statement that he was in town to help Dorfman "set up a method to get to the jury" (p. 35, *supra*), King's statement that "they had a meeting set up on the jury that night" (p. 36, *supra*), and Hoffa's statement that "they was going to get to one juror or try to get to a few scattered jurors and take their chances" (p. 36, *supra*).

Partin's information was dramatically corroborated from two independent sources within 36 hours of his initial communication with Sheridan. Indeed Partin's information was itself corroborative of information, already possessed by the government, tending to indicate that improper approaches to prospective jurors had begun.

At the time of Partin's initial report to Sheridan (some time in the late afternoon or early evening of October 22), it had been reported to the court, and it had come to the attention of the attorneys for both sides, that one of the prospective jurors on the panel, a Mrs. Branham, had received a telephone call from someone who had represented that he was "with the local papers." The caller, according to the report,

had inquired about the juror's prior jury service, where her husband was employed, whether she had "followed the Hoffa story" in the newspapers, and whether she would "listen to both sides before making up [her] mind." The juror had reported the conversation to the United States Marshal, who in turn reported it to the court and to the United States Attorney. The United States Attorney adverted to the matter in open court, in the presence of defense counsel, on the morning of October 22, the first day of the trial, and it was the subject of comment and discussion in the proceedings of that day.

On the following day, October 23 (the day after Partin's first call to Sheridan), Mrs. Branham was questioned by the court on *voir dire* as to whether the incident she had reported had affected her ability to serve as an impartial juror. At that time two other prospective jurors, Stuart and Harrison, informed the court that they too had received telephone calls from a person or persons representing themselves to be newspaper reporters, juror Stuart reporting that the person who had called him had identified himself as a "Mr. Allen" of the Nashville *Banner*,[48] and juror Harrison that his caller had similarly represented himself as being with the *Banner*.[49]

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[48] The *Banner* had no reporter by that name.

[49] The record in this case does not contain the portions of the Test Fleet transcript in which the incidents to which we have referred were recorded. We have, however, reproduced the relevant portions of the transcript in the Appendix, pp. 145–150, *infra*. This Court may take judicial notice of the record in a related proceeding in another federal court. See *Brown* v. *Board of Education*, 344 U.S. 1, 3 (notice taken that issue in

On the following morning, a prospective juror named Tippens, who had been tentatively seated in the jury box on the afternoon of the 23rd, reported to the court that a $10,000 bribe offer had been made to him by a neighbor. (This occurred, it should be recalled, on the day after Hoffa told Partin that he

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case pending in United States Court of Appeals for District of Columbia Circuit was sufficiently similar to issue in cases pending in this Court to make advisable simultaneous consideration of both issues by this Court); *Lambert* v. *Conrad*, 308 F. 2d 571 (C.A. 9) (notice taken of record in related State court proceeding to determine whether federal action was barred by statute of limitations); *St. Paul Fire & Marine Insurance Co.* v. *Cunningham*, 257 F. 2d 731, 732 (C.A. 9) (same); *Wagner* v. *Fawcett Publications*, 307 F. 2d 409, 411 (C.A. 7), certiorari denied, 372 U.S. 909 (notice taken of record in related State criminal case to determine whether publication alleged to have violated plaintiff's right of privacy had to do with currently newsworthy matter); *Kalimian* v. *Liberty Mutual Fire Insurance Co.*, 300 F. 2d 547, 549 (C.A. 2) (notice taken by court of appeals of record in related action in district court in determining that actions should be consolidated); 9 Wigmore, *Evidence* (3rd ed. 1940), § 2579. Cf. *Butler* v. *Eaton*, 141 U.S. 240, 244 (notice taken by this Court, in proceeding arising in federal court, of record in related State court proceeding which had reached this Court); *Craemer* v. *Washington State*, 168 U.S. 124, 129 (same). It should be emphasized that our reference to the Test Fleet transcript is for the purpose of showing, not that the telephone calls in question were in fact made, but simply that reports of such calls were made to the court by the jurors. Our request that the Court judicially notice the transcript of the closely related Test Fleet proceedings for this limited purpose is particularly justified, it is submitted, for the reason that the district court proceedings in the instant (Chattanooga) case, unlike the issues presented to this Court, did not focus on the government's *justification* for continuing to receive Partin's reports during the progress of the Test Fleet trial, but on whether the government was responsible for Partin's presence in Nashville and whether, as a consequence of Partin's activities, Hoffa's Sixth Amendment rights in the Nashville trial were in any way abridged.

might want Partin to "pass something" for him.) See p. 6, *supra*.

The question whether government agent Sheridan acted properly and with due regard for petitioner Hoffa's Sixth Amendment rights when he asked Partin to continue to supply information concerning jury tampering and other illegal activity must be judged in light of these unique circumstances. We recognize, as Sheridan doubtless did, that there was a risk that Partin's continued activities along this line might occasionally touch, albeit unintentionally, on privileged defense secrets or attorney-client communications. But we believe that the decision to request additional information from Partin about unprivileged statements relating to the efforts to obstruct justice was justified by the need to safeguard the ongoing trial.

Sheridan could, of course, have requested Partin to return to Baton Rouge or never to communicate with the government again during the trial. This course entailed the manifest danger that the accused's efforts to win acquittal or a mistrial through corrupt approaches to the jury—of which the government now had corroborated evidence—would continue undetected as the trial progressed and possibly achieve ultimate fruition. The government would thereby also have been relinquishing the only means it possessed of determining whether other jurors had, like Tippens, already been corruptly approached.

We submit that Sheridan chose the wiser course—to continue to receive the informant's reports, cause the F.B.I. to investigate them to the extent possible consistently with the continuing trial, and, when the investigations established that there was substance to the

reports, advise the court of the situation and take appropriate remedial steps, including the institution of proceedings to disqualify the jurors who had been the objects of the corrupt endeavors. Pp. 37–38, *supra,* and see note 6, *supra.* We submit that this course was justified by the great risk that petitioner Hoffa would otherwise have succeeded in his obvious determination to make a travesty of his trial through the corruption of jurors.

We emphasize, in this regard, that what was being done did not directly infringe any constitutional right; we are not, in other words, arguing that petitioner Hoffa's Sixth Amendment rights were outweighed by the practical necessities described above. For what was involved here was merely a *risk* that Partin, if he were to continue to inform on Hoffa's illegal activities, would occasionally hear and undesignedly report privileged matter. Hence it cannot be said, as this Court did in *Massiah* v. *United States,* 377 U.S. 201, 206–207, that notwithstanding the propriety and reasonableness of the government's conduct, the evidence obtained was elicited in violation of a constitutional right and would, therefore, have to be excluded. As we demonstrate below (pp. 107–116, *infra*), Partin's testimony in this case was "untainted" by any Sixth Amendment violation. The mere risk that he might participate in a constitutional violation surely did not make all his reports impermissible.

3. Partin's reports did not interfere with any right protected by the Sixth Amendment

At the conclusion of the hearing on petitioners' first motion to suppress Partin's testimony (at which six

of Hoffa's Test Fleet trial attorneys testified in addition to Partin and Sheridan, see pp. 41–52, *supra*), the trial court found—after expressly alluding to its having "observed the manner and demeanor" of the witnesses—that (2 R. 419; p. 58, *supra*):

> there has been no interference by the government with any attorney-client relationship of any defendant in this case.

Subsequently, in its opinion denying motions for a new trial, the court repeated the substance of this finding and made additional, interrelated findings. After noting that the contents of the telephone conversations of October 8 and 18 did not in any way alter the court's conclusion that the government did not "place or keep" Partin in the defense camp during the Nashville trial, the court continued (1 R. 144–145; p. 59, *supra*):

> Neither does it in any way relate to or in any way alter the Court's finding that there was no illegal interference with the right of the defendant Hoffa to representation by counsel. The Government requested of Partin only that he report information of jury tampering or other illegal activity of which he became aware. Partin voluntarily furnished such information.

It is, of course, well established that the credibility of witnesses on a motion to exclude or suppress evidence is for the district judge to determine. *Abel v. United States*, 362 U.S. 217, 225–230; *United States* v. *Hilbrich*, 341 F. 2d 555, 559 (C.A. 7), certiorari

denied, 381 U.S. 941; *United States* v. *Vita,* 294 F. 2d 524, 528 (C.A. 2), certiorari denied, 369 U.S. 823; *United States* v. *Ziemer,* 291 F. 2d 100, 102 (C.A. 7), certiorari denied, 368 U.S. 877; *Channel* v. *United States,* 285 F. 2d 217, 220 (C.A. 9). Cf. *Rios* v. *United States,* 364 U.S. 253, 256–257, 262. And see *Sherman* v. *United States,* 356 U.S. 369, 373. Hence, to the extent that these findings are factual, they may not be disturbed unless "clearly erroneous." *Campbell* v. *United States,* 373 U.S. 487, 493; *United States* v. *McGavic,* 337 F. 2d 317, 319 (C.A. 6), certiorari denied, 380 U.S. 933; *Villano* v. *United States,* 310 F. 2d 680, 684 (C.A. 10); *United States* v. *Page* 302 F. 2d 81, 85 (C.A. 9); *Biggs* v. *United States,* 246 F. 2d 40, 44 (C.A. 6), certiorari denied, 355 U.S. 922.

The court's finding that the government did not interfere with any attorney-client relationship or Hoffa's right to representation by counsel was, of course, a finding on a mixed question of law and fact. But the factual element of this question compelled the court to choose between Partin's testimony that anything he might have learned about trial strategy was only incidental to his conversations with Hoffa and the speculation of Hoffa's lawyers that Partin must have been regularly engaged in transmitting defense secrets to the prosecution. In concluding that no interference had occurred the court must have credited Partin's version of his role and Sheridan's testimony regarding the nature of the information passed on to him.

The testimony of Partin and Sheridan established that Partin neither sought to learn defense secrets or other information subject to the attorney-client privilege nor did he intentionally report such matter to government agents. The only information requested and the bulk of that received was material which could not, by any stretch of the imagination, be deemed privileged or otherwise protected by the assistance-of-counsel provision of the Sixth Amendment. It was, in overwhelming part, such information as even attorneys would be obliged to disclose if their clients confided it to them. See p. 72, *supra*.

Partin testified unequivocally that he made no effort during the trial to "get into or be present at any conversations between lawyers or anything of that sort," otherwise than in such generalities as "how things looked" or "how does it look" (2 R. 271, 282, 285). He said that the attorneys "would move you out" when they wished to discuss the case; that he might occasionally have been present when the case was discussed by the lawyers, but, if so, he "didn't know what they were talking about, because I wasn't interested in what they had to say about the case;" that his only interest was in talking to Hoffa (including discussions with him about union and personal matters); and that he might, on occasion, during the period when he was acting as doorkeeper, have gone into the suite to get someone or something, but that if so he had no recollection of "the case being discussed." Pp. 41–42, *supra*.

Sheridan testified that the "vast majority" of the information reported to him by Partin during the

Nashville trial concerned (1) jury tampering efforts, (2) the "comings and goings of people," and (3) happenings which, whether they were illegal or not, seemed to Sheridan to involve unethical or improper conduct.[50] There were, in addition, bits of information, "very minimal" in amount, which related "just generally to the trial"—such as comments by Hoffa as to how he felt "the day had gone" in court, when he thought the case would go to the jury, and the

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[50] Partin's testimony that he reported to Sheridan "[a]nything that I would have seen" (3 R. 874), referred to at Pet. Br. 13, did not, in its context, mean that Partin indiscriminately reported to Sheridan everything he saw or heard going on in the defense camp, as petitioners imply. In the cited reference, Partin, after acknowledging that he reported to Sheridan on a daily or near-daily basis during the periods he was in Nashville, was asked what he reported on days other than those concerning which he had specifically testified. Partin replied, "Anything that I would have seen" (3 R. 874). That Partin did not mean by this answer that he reported, literally, everything he saw and heard was, however, made clear in the questions and answers immediately following (3 R. 875):

> Q. I said you have testified only to a few isolated events in a three month period and yet you had testified you reported to Mr. Sheridan, now what did you report daily besides these isolated events?
>
> A. I don't remember the details of them. It wouldn't have been of any importance because what I reported I was asked about later at a later date so I remembered the things. I talked to him almost daily either on the phone—
>
> Q. (Interposing) And you kept him up as to what those lawyers were doing for Mr. Hoffa and what Mr. Hoffa was doing, didn't you, while that trial was going on?
>
> A. I wasn't interested in what the attorneys were doing.

Partin had testified earlier, indeed, that he did not believe he had reported *anything* told him by the attorneys, since Sheridan was not interested in what the attorneys said (2 R. 297). The witness testified that he did not report every conversation he had had even with Hoffa himself (2 R. 291–292).

like—and some "very small bits" of conversations of or comments by attorneys, the character of which was not further elicited. Partin never furnished Sheridan with copies of documents and never told Sheridan that he had access to documents; nor did Sheridan ever inquire whether he had such access. P. 43, *supra*.[50]

Some of the information which Partin reported to Sheridan was reported by Sheridan to the chief government attorney at the Nashville trial, James Neal. The "matters relating to the trial" which were so reported, Sheridan testified, consisted *exclusively* of (1) the information concerning jury tampering and (2) some of the matters (other than jury tampering) which seemed to Sheridan to involve at least unethical conduct. P. 44, *supra*.

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[51] There is no real support in the record for petitioners' assertion (Pet. Br. 13) that Partin reported to Grimsley details of the Test Fleet trial other than the jury tampering activities of petitioners. The record shows that Partin occasionally called Grimsley, particularly when he would be changing planes in Atlanta on his way to or from Nashville, to tell him some of the indications he had witnessed of the corrupt efforts to influence the jury (which he had already reported to Sheridan) (2 R. 639–640; 4 R. 1495–1496, 1505–1507). In reply to a question by defense counsel as to when Partin first "went into some detail [with Grimsley] about the Nashville Hoffa case and its trial," Partin replied, "In major details * * * I would say would be most of the time in Atlanta when I stopped on the way to Baton Rouge, Louisiana, I would change planes" (2 R. 639). There is nothing in the context, however, to indicate that Partin was here referring to anything other than the "major details" of the jury tampering activities which he associated with that trial. The clear import of Grimsley's testimony, too, is that the only aspects of the trial which Partin related to him had to do with the corrupt endeavors to approach the jury (see, particularly, 4 R. 1495–1496, 1505–1507).

With a single exception (discussed at pp. 99–100, *infra*), the foregoing represents the sum and substance of the things reported by Partin to Sheridan and by Sheridan to Neal. We stress this because petitioners, at pages 10–13 of their brief, appear to suggest that Partin was constantly trying to ferret out defense secrets by plying the attorneys with questions and listening to their conversations, and, by inference, (1) that he must have been regularly reporting what he learned through these devices to Sheridan and (2) that Sheridan must have regularly relayed what Partin told him to Neal. These assertions are based almost entirely on inferences from the testimony of defense witnesses (*some* of the attorneys for Hoffa at the Test Fleet trial) which substantially conflicted, in the more important respects relied on,[52]

[52] Some of the actions of Partin referred to by petitioners were either acknowledged by Partin or not, in substance, denied. For example, petitioners point out that Partin heard attorney Kossman criticize other defense attorneys (Pet. Br. 12). Partin acknowledged this to be true (2 R. 316; note 33, *supra*). Petitioners state that Partin "took defense exhibits to the printer" (Pet. Br. 12). Partin acknowledged seeing some charts (later submitted as defense exhibits) in the Hoffa suite, but stated that he had no interest in them, and that if he did anything to assist in their preparation it was of such a minor nature that he had no recollection of it (2 R. 291, 303; p. 42, *supra*). We submit that such relatively innocuous acts as those referred to can in no sense be said to have impaired or substantially interfered with the accused's right either to counsel or to a fair trial. Certainly it is difficult to see how the mere physical act of taking an exhibit to a printer to be printed (assuming that Partin did this) can be said to have been prejudicial. Copies of neither this nor any other defense document were furnished by Partin to Sheridan, who was never told by Partin that he had access to documents and never inquired of Partin whether he had such access (2 R. 382–383; p. 43, *supra*).

with Partin's testimony on the same subjects. The trial court's finding that there had been "no interference by the government with any attorney-client relationship of any defendant in this case" (2 R. 419; p. 58, *supra*), and "no illegal interference with the right of the defendant Hoffa to representation by counsel" (1 R. 144; p. 59, *supra*), involved an implicit declination to credit the defense testimony on this issue to the extent that it conflicted with Partin's—particularly in light of the court's prefatory observation that in making its findings it had "observed the manner and demeanor" of the witnesses (2 R. 419; p. 58, *supra*). It follows that petitioners, in this phase of their argument, are in large part relying on testimony not credited by the court.[53]

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[53] The only defense witness who testified that Partin made aggressive efforts to learn defense strategy was attorney Maher (p. 51, *supra*). His testimony was vulnerable in several respects. Maher claimed, for example, that Partin pressed attorney Haggerty—who was Hoffa's senior counsel—as to what "Jimmy's story" was going to be (p. 51, *supra*). In testifying about his own relations with Partin, Haggerty never mentioned such an incident. Indeed, he stated that "for all practical purposes, [he] never had a discussion with Mr. Partin" (2 R. 351). Maher also testified that on "at least two or three occasions on the first day" of the Test Fleet trial, prosecutor Neal objected to questions before they were asked (2 R. 406). When he was challenged and given time to find these instances in the Test Fleet transcript, he was unable to do so (2 R. 412; 3 R. 824, 1041). Apart from the two instances discussed *infra*, attorney Bufalino testified only generally that he "had many discussions with Ed Partin regarding the actual strategy of the case" (2 R. 331). He did not, however, assert that Partin had solicited such information or that he had in any way attempted affirmatively to extract defense secrets. The testimony of these attorneys that Partin was constantly in and around Hoffa's suite

Petitioners' broad claim that attorney-client confidences were repeatedly invaded by Partin's conduct really boils down to two incidents, and only as to one of these are we prepared to agree that a report from Partin to Sheridan was involved. On one occasion, Sheridan testified, Partin reported that some people were being interviewed by attorney Bufalino and that Bufalino "was going over" some written "questions and answers" with them. Sheridan knew, independently of Partin, that the persons involved were truck drivers whom the defense was calling as witnesses. It was Sheridan's understanding from what Partin told him that Bufalino had written out the questions and answers and told the witnesses to "memorize them."[54] This incident was evidently the principal matter, not relating to jury tampering, which appeared to Sheridan to involve unethical conduct. Partin did not furnish Sheridan with copies of the questions and answers nor does it appear that he in

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may be contrasted with Hoffa's own testimony that he saw Partin only "sporadic[ally]" during the trial, and that their meetings dealt almost entirely with Partin's personal problems and difficulties (pp. 52–53, *supra*). If it were true that Partin was constantly seeking to learn defense secrets and strategy, it is difficult to see why he did not press Hoffa, who was his good friend, for such information, particularly, for example, as to what "Jimmy's story" on the witness stand was going to be.

[54] Partin testified that he had no recollection of this incident (3 R. 1012–1013; note 35, *supra*). Sheridan testified that he did not think Partin knew at the time who the persons being interviewed were (2 R. 389; p. 43, *supra*). Partin did testify that he recalled seeing certain persons in the lobby of the hotel who he later learned were defense witnesses, but that he did not know at the time that they were to be witnesses (2 R. 310, 311–312; p. 42, *supra*).

any way informed him as to their content. P. 43–44, *supra.*

Bufalino testified that Partin had been present during his interview of the truckdriver witness, but he did not say that Partin had affirmatively sought to be there during the interview and he testified that he did not recall Partin's asking any questions (2 R. 333–334, 342). Indeed, it is a fair inference from Bufalino's testimony that Partin was asked to be present in order to help staple together the witnesses' testimony (2 R. 334, 344). Partin apparently believed from what he saw that witnesses were being instructed what they should testify to under oath, not merely interrogated in preparation for their in-court examination. It was not, we submit, unreasonable for him to suppose that unlawful or otherwise impermissible conduct was being engaged in.

The second incident mentioned in Bufalino's testimony was an occasion when prosecutor Neal "objected to a question before the defense counsel could state it, other than referring to a date." Counsel asked Neal how he knew what was going to be asked and whether Neal had been "listening to our conversations." The prosecutor replied, "I am psychic" (Pet. Br. 12). Petitioners imply (1) that Neal knew what the defense attorney was going to ask the witness from something which Sheridan had told him, (2) that Sheridan's information must have come from Partin, and (3) that Partin's knowledge must have been based on some conversation overheard by him in the Hoffa suite. There is no support in the record

or elsewhere for this chain of inferences. Government counsel explained at the time that he knew what the subject of inquiry was going to be from the date which counsel had given in the preface to his question (4 R. 1584). It is not surprising that in a case which required two months to try and must have involved substantial preparation by both sides government counsel had anticipated a certain line of defense based on matters which had occurred in December 1953. There is no substance to the assertion that the information must have come to Neal from Partin through Sheridan.

In short, what this record discloses is that, with the exception of one lapse (as to which Partin had made no solicitations or affirmative efforts and as to the lawfulness of which he was apparently under a bona fide misapprehension), the informant either did not learn or did not disclose to the government any information to which the Sixth Amendment affords protection. The statements heard and repeated pertained rather to one or more unlawful conspiracies. Such statements are not cloaked by any privilege; indeed, responsible citizens have a duty to report them to law enforcement authorities. *Miranda* v. *Arizona*, 384 U.S. 436, 477–478.

We emphasize, in this regard, that Partin's reports dealt not with a crime that had been committed some time in the past. The interest of society and of law enforcement in his reports was not merely to bring the guilty to justice. It was also, as we have shown above, to prevent the successful execution of a crim-

inal plan. The obligation of citizenship to provide information which this Court recognized in *Miranda* is, we submit, all the more pressing when the information which is being provided may assist not only in convicting those guilty of violating criminal statutes but also in preventing the success of planned criminal endeavors.

There is no merit, accordingly, to the claim of petitioners, which the *amici curiae* also advance, that had Hoffa been convicted in Nashville the conviction must of necessity have been reversed on appeal (Pet. Br. 49; ACLU *Amicus* Br. 4; Crim. Cts. Bar Assn. *Amicus* Br. 5–6). We submit that under the findings made by the district court in the instant case and confirmed by the court of appeals, this assertion is plainly erroneous. The district court determined, as we have noted, that there had been "no interference by the government with any attorney-client relationship" (2 R. 419) such as infected the trial in *Caldwell* v. *United States*, 205 F. 2d 879 (C.A.D.C.); hence the *Caldwell* decision would not have required [redacted] reversal of the Nashville conviction, had there been one.

The facts in this case are also entirely different from those in *Coplon* v. *United States*, 191 F. 2d 749 (C.A.D.C.), certiorari denied, 342 U.S. 296, on which petitioners rely (Pet. Br. 44, 49). In *Coplon*, government agents deliberately intercepted telephone communications between the defendant and her attorney. In the present case it is clear from Partin's testimony, and even from the recollections of Hoffa's attorneys, that Partin did not actively intercept attor-

ney-client communications. Indeed, petitioners' reliance on *Coplon* highlights the basic error in their contention that a violation of Sixth Amendment rights occurred during the Nashville trial. For, as the *Coplon* case demonstrates, the vice in having a government informant in the defense camp during a trial is that he may overhear and transmit privileged communications—*i.e.*, conversations between a defendant and his attorney or other expressions of defense strategy. The Sixth Amendment does not cloak with a privilege all statements made by a defendant on trial. If he discusses other matters which are subject to no privilege, and surely if he plans or directs the commission of separate crimes, his statements are as unprotected against disclosure as if no trial were in progress. Petitioners' claim rests, on the other hand, on a notion that defense secrets and everything else a defendant may say during trial is "one continuous process," and that none of it may be disclosed by those in whom the defendant has confided (Pet. Br. 45–51). That proposition, we submit, is plainly untenable because it misapprehends the scope of the Sixth Amendment's protection.[55]

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[55] Cases like *Glasser* v. *United States*, 315 U.S. 60 (representation of accused persons with conflicting interests by single attorney), *United States* v. *Venuto*, 182 F. 2d 519 (C.A. 3) (refusal to permit defendant to consult with counsel during overnight interruption of cross-examination), *State v. Cory*, 62 Wash. 2d 371 (eavesdropping by State officers, by means of secret microphone, on accused's conferences with attorney), *Matter of Fusco* v. *Moses*, 304 N. Y. 424 (participation by informer-employee, pretending to be under same charges as employees informed against, in employees' conference with at-

The negligible information as to defense counsel's activities obtained by Partin in the present case renders it more closely analogous to *United States* v. *Lebron,* 222 F. 2d 531, 534–535 (C.A. 2), certiorari denied, 350 U.S. 876, in which it was held that the presence of a government informer at a meeting of a defense attorney and prospective witnesses at which "the plans for defense" were discussed (222 F. 2d at 535) was inadequate to warrant reversal where there was no evidence that counsel and the witnesses "discussed what any of the witnesses would testify at the trial" (*ibid.*). It is true that on one occasion Partin communicated to Sheridan the fact that written questions and answers had been prepared for certain defense witnesses (pp. 43–44, 99–100, *supra*). It does not appear, however, that the substance of the witnesses's testimony or even their identity was transmitted to the government.

Nor can it be argued that Partin's knowledge of any scintilla of defense strategy *ipso facto* rendered the Nashville trial unfair and required reversal of any resulting conviction. In *United States ex rel. Cooper* v. *Denno,* 221 F. 2d 626 (C.A. 2), certiorari denied, 349 U.S. 968, a police officer who understood Yiddish, the language spoken by the defendants, was

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torney), *McBride* v. *The State*, 121 Tex. Crim. 549 (refusal to permit accused to confer with counsel except in presence of officer), and *In re Qualls*, 58 Cal. App. 2d 330 (denial to accused and counsel of facilities for private consultation), cited at Pet. Br. 49, all involved situations which were also materially different from that of this case, and are for that reason inapposite.

seated near the defense table during part of a State trial in which the accused were convicted. It was contended, in a federal habeas corpus proceeding attacking the verdicts, that the officer had been placed there by the State for the purpose of overhearing conversations between the defendants and their attorneys. On appeal from a judgment adverse to the defendants, the court of appeals, after noting that there was no evidence that the officer had been intentionally seated near the defense table to overhear privileged communications between the accused and their counsel (he was there as a security measure following the receipt of information that the defendants planned to escape during a recess), rejected a claim that, irrespective of the State's motive, the officer's asserted ability to overhear such communications violated the accused's constitutional rights and vitiated the verdicts. "The argument is made, however," said the court (221 F. 2d at 629),

> that even if Rubin's presence was justified for security purposes, his encroachment was unlawful because he was in a position to hear confidential lawyer-client communications. This argument is tantamount to the assumption that the right of privacy of lawyer-client communications overrides reasonable security measures. We do not agree. "The people of the State are also entitled to due process of law." * * * Such rights are not necessarily mutually exclusive. Each must yield to the rule of reason. In case of actual or possible conflict, the rule is to be applied by the court in the light of the existing circumstances.

Analogously, the fact that Partin was in a position during the Nashville trial where he might possibly have overheard lawyer-client communications (and did in fact learn some trial information) would neither require nor justify reversal of a resulting conviction, had there been one. For, as in the *Cooper* case, there was a justifying reason for Partin's presence in the defense quarters during the trial—even if he be viewed, for present purposes, as a representative of the government during the pertinent period. And the fact that the government was *not* responsible for his presence there gives added force to these considerations.

If it were true that any knowledge by a government informant of any defense strategy whatever, no matter how slight or how incidentally obtained, would violate the Sixth Amendment guarantee of the effective assistance of counsel, and invalidate a conviction arising out of a trial in which the government had obtained such knowledge, it would follow that a conviction could not stand where a person who had assisted the defense became a government informant after severing his ties with the defense but before trial. Yet in *United States* v. *Rosenberg,* 146 F. Supp. 555 (E.D. Pa.), reversed on other grounds, 245 F. 2d 870 (C.A. 3), relief was denied in a situation in which one who had "assist[ed] in the preparation of the defense," including the "procurement of witnesses" and the "obtaining [of] information," subsequently (but prior to the trial in which the accused was convicted) became a government inform-

ant (146 F. Supp. at 559–560)—the court observing that there was no proof that the person had become such an informant or had discussed the case with the prosecution officials "until after his last meeting with defendant and his attorney" (146 F. Supp. at 560).

These cases demonstrate that unplanned discovery by a government informant of fragmentary defense strategy in the course of a trial or in preparation for one does not invalidate that trial if the government has not placed its agent in or near the defense camp with the design of learning defense secrets and capitalizing on such knowledge at the trial. The district court's conclusion, after full hearings, that no violation of constitutional rights occurred during the Nashville trial was, therefore, as the court of appeals ruled, fully justified; petitioners and the *amici* are in error in asserting that the Nashville trial suffered from a constitutional defect.

B. IRRESPECTIVE OF THE NASHVILLE TRIAL, THE INCRIMINATORY STATEMENTS ABOUT WHICH PARTIN TESTIFIED WERE ADMISSIBLE IN EVIDENCE.

We have demonstrated above that the 1962 Nashville trial did not fall short of Sixth Amendment standards and that a conviction resulting therefrom would not have been reversible under the principles of the *Caldwell* and *Coplon* cases. If we are right on that proposition, petitioners' claim that Partin's testimony was inadmissible here as the fruit of a Sixth Amendment violation plainly falls.

Even if this Court should be of the view, however, that Partin's incidental knowledge of defense secrets

and his unintentional report to Sheridan of one matter that could be characterized as trial strategy or defense information infected the Nashville trial, that conclusion would not justify reversal of these convictions. The issue in this case is not whether the Nashville trial satisfied constitutional standards; it is whether government evidence in the Chattanooga trial was improperly admitted. That question, in turn, depends on whether the challenged evidence—*i.e.*, Partin's testimony—was subject to a rule of exclusion. And whether otherwise competent evidence is excludible hinges, as this Court has often emphasized, on whether it is "the fruits of wrongdoing" by government agents. *United States* v. *Mitchell,* 322 U.S. 65, 70; see, *e.g., Mapp* v. *Ohio,* 367 U.S. 643, 658; *Wong Sun* v. *United States,* 371 U.S. 471, 484, 485. The basis for a rule of exclusion in these circumstances is, in other words, that "knowledge gained by the Government's own wrong cannot be used by it * * *." *Silverthorne Lumber Co.* v. *United States,* 251 U.S. 385, 392.

1. Partin's testimony was not the "fruit" of a Sixth Amendment violation

A closer analysis of the present case than the general view put forth by petitioners demonstrates clearly, we submit, that the testimony given here by Partin was not, in any sense, the "fruit" of the alleged "government wrongdoing" during the Nashville trial. It was not, therefore, subject to any rule of exclusion.

It is important to re-emphasize in this regard what the assistance-of-counsel clause of the Sixth Amendment protects under the principles of the *Caldwell* and *Coplon* cases: It insures to a criminal defendant the right to communicate in privacy with his attorney and otherwise to prepare for trial without intrusion by the government, his adversary in the pending or prospective proceeding. It does not, however, cloak with a legal privilege every statement uttered by a defendant on trial. And it surely does not confer upon him the right to plan future offenses, with his attorneys or in their presence, and then to prevent disclosure of those plans by the persons with whom he has discussed them.

We think it is entirely clear, in light of this principle, that Partin infringed no Sixth Amendment right whatever when he reported to Sheridan what he had heard concerning ongoing efforts to bribe jurors. And it was only the information concerning the endeavors to corrupt justice which was used by the government in the trial here under review. The evidence introduced in this case was, to be sure, obtained by the same individual who engaged in the alleged intrusion upon Sixth Amendment rights (which we assume only *arguendo*). But the fact that an informant, in a given investigation, provides information which was improperly obtained, does not taint evidence which the same individual has obtained by lawful and proper means. If such "taint" carried over, agents who engaged in an unlawful search or seizure

would be disqualified from testifying with regard to any other aspect of an offense.

The test by which to determine whether government misconduct has so tainted evidence as to render it inadmissible was discussed by this Court in *Wong Sun v. United States*, 371 U.S. 471. The Court there expressly approved Professor Maguire's suggested standard for determining whether evidence is "fruit of the poisonous tree." The question, said the Court, is "whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." 371 U.S. at 488 (quoting Maguire, *Evidence of Guilt* (1959), 221). If this test is applied to the facts of this case and the evidence to which objection was made is considered in light of the specific "primary illegality" relied on, there can be no doubt, we submit, that the evidence sought to be suppressed was in no respect the "fruit" of any "poisonous tree."

It is alleged intrusion on defense strategy—not the statements regarding jury tampering (which were made to Partin privately by Hoffa and King)—which constituted the asserted "primary illegality" under the test approved in the *Wong Sun* decision. The substance of Partin's testimony—the evidence petitioners sought to have suppressed—had not "been come at by exploitation of that illegality." It was not as a consequence of Partin's having learned something in the course of a conference of attorneys to

which he may have had access, or of his having discovered strategic information during Mr. Bufalino's interview with the truck-driver witnesses, or of Hoffa's having (possibly) personally confided some defense secret to him,[56] that Partin obtained the evidence which was used against petitioners at the Chattanooga trial. Indeed, all of the statements testified to by Partin as having been made to him by Hoffa and King were made in the absence of counsel, so far as appears, and at least out of the hearing of any persons who might have been nearby. No statement of Hoffa's, testified to by Partin, had any relationship whatever to any legitimate aspect of the defense's Nashville strategy. The statements would have been equally available to the government as evidence, and equally germane to the issues at the Chattanooga trial, had Partin studiously avoided all contact with the Nashville defense attorneys, never been present when witnesses were interviewed (as he evidently was on one occasion), and never discussed any legitimate defense secret with the accused himself (as indeed, so far as appears, he had not). Indeed, had the statements of Hoffa to which Partin bore witness at the Chattanooga trial been made in the lobby of the Andrew Jackson Hotel rather than in the Hoffa suite—or outside the hotel, as at a local bar or restaurant—the absence of any causal link or connection between the statements and the "councils of the defense" would be readily apparent. But *where* the statements

[56] There is no evidence that Hoffa ever did, and Hoffa's own testimony precludes that conclusion. See pp. 52-53, *supra*.

were made had, obviously, no relevance whatever at the jury tampering trial. That they happened to be made in the same physical area where Hoffa customarily met with his attorneys in their day-to-day preparations for trial was fortuitous. For these reasons, it is submitted, the challenged testimony was the "fruit," not of Partin's activities as an alleged intruder upon strategic meetings between Hoffa and his attorneys, but solely of Hoffa's misplaced confidence in a trusted associate, to whom he made indiscreet remarks and admissions. As the court of appeals pertinently observed (1 R. 202):

> The testimony of Partin sought to be suppressed related not to trial strategy in the Test-Fleet case, but to illegal endeavors to bribe or influence jurors. Informing the Government of the existence of such evidence did not interfere with the rights of Appellants to the effective assistance of counsel. They had no lawful right to engage in such conduct, either with or without the assistance of counsel. There was no evidence here that counsel knew anything about the unlawful endeavors.

The point we are making may be illustrated more clearly by a hypothetical case. If a government informant, a close associate of a defendant on trial for robbery, to whose strategy meetings with his attorneys he allows the informant free access, is privately told by the accused, in a room where the accused also meets regularly with his counsel, that he intends to sell narcotics, or to burglarize a house, or to commit some other offense wholly unrelated to the one

for which he is on trial, it could hardly be contended that the statement relating to the separate crime is, in some manner, "fruit" of the informant's access to the strategy meetings. The present case is essentially the same. Hoffa was on trial in Nashville for violating the Taft-Hartley Act. His statements (and those of King) which were received in evidence in Chattanooga related to the commission of a separate offense—attempted obstruction of justice—and were made to Partin privately, in the absence of Hoffa's attorneys. The fact that Partin may have had access to strategy conferences and did report one matter pertaining to witnesses who had been interviewed did not cause or in any way contribute to Hoffa's and King's disclosures to Partin. The alleged illegality was, in short, never "exploited" for any purpose whatever.

In *Wong Sun* v. *United States,* 371 U.S. 471, this Court held that Wong Sun's confession, made after his illegal arrest, was not the "fruit" of the government's illegal action because, following his arraignment and release on recognizance, he had "returned voluntarily," several days later, to make his statement. 371 U.S. at 491. The Court held that the connection between the arrest and the statement had "become so attenuated as to dissipate the taint." *Ibid.,* quoting *Nardone* v. *United States,* 308 U.S. 338, 341. The fact remains that the accused would almost certainly not have come forward to admit his guilt in the manner that he did had it not been for his arrest and the succeeding events triggered by it. The confession, in

short, would not have occurred but for the arrest. In that sense, at least, there was an undeniable nexus between the unlawful intrusion on the accused's rights and the incriminating statement held to have been properly received. In the instant case, on the other hand, there was no cause-effect relationship whatever, as we have argued, between Partin's access to the councils of the defense and the statements privately made to him by Hoffa. The relationship was far more tenuous than the one held insufficient in *Wong Sun*. If the confession in *Wong Sun* was properly admitted, so, *a fortiori*, was the challenged testimony in this case.

Again, in *United States* v. *Bayer*, 331 U.S. 532, this Court sustained the admissibility of Radovich's second confession—an elaboration of his earlier, inadmissible one—though the court of appeals had held the second confession to have been "patently the fruit of" the bad one, and this Court itself recognized that there was a perfectly valid sense in which the later confession could properly be regarded as "fruit" of the first (*id.* at 539–541). Noting that after an accused "has once let the cat out of the bag by confessing, no matter what the inducement, he is never thereafter free of the psychological and practical disadvantages of having confessed," since the secret is then "out for good," the Court observed that in that sense "a later confession always may be looked upon as fruit of the first" (*id.* at 540). The Court nevertheless declined to apply the "fruit of the poisonous tree" rationale of *Nardone* v. *United States*, 308 U.S. 338,

and *Silverthorne Lumber Co.* v. *United States*, 251 U.S. 385. It upheld the admissibility of the second confession because the conditions which precluded use of the first one had been removed when the second was given. We consider that the *Bayer* decision, too, gives *a fortiori* support to our position.

Likewise pertinent, we submit, are the numerous decisions holding that voluntary (and otherwise admissible) statements made in custody are not vitiated solely by the circumstance that the maker's arrest was unlawful. *United States* v. *McGavic*, 337 F. 2d 317, 318–319 (C.A. 6), certiorari denied, 380 U.S. 933; *Burke* v. *United States*, 328 F. 2d 399, 402 (C.A. 1), certiorari denied, 379 U.S. 849; *Brinegar* v. *United States*, 165 F. 2d 512, 515 (C.A. 10), affirmed on other grounds, 338 U.S. 160; *Gibson* v. *United States*, 149 F. 2d 381, 384 (C.A.D.C.), certiorari denied *sub nom. O'Kelley* v. *United States*, 326 U.S. 724. See, also, *Rogers* v. *United States*, 330 F. 2d 535, 542 (C.A. 5), certiorari denied, 379 U.S. 916 (*dictum*); *Smith* v. *United States*, 254 F. 2d 751, 758–759 (C.A.D.C.), certiorari denied, 357 U.S. 937 (*dictum*); *United States* v. *Walker*, 197 F. 2d 287, 289–290 (C.A. 2), certiorari denied, 344 U.S. 877 (*dictum*). The mere fact, in other words, that the accused was illegally arrested does not, without more, render inadmissible at his trial a statement made while under detention—even though it is apparent that but for the arrest, and the accused's consequent presence at the place where the statement was made, there would have been no statement. Cf. *Wong Sun* v. *United States*, *supra*.

By the same token, the mere fact that Partin's presence in the defense camp, which assertedly gave him "access" to attorney-client conferences and defense strategy, also enabled him to speak privately with Hoffa constitutes insufficient causal relationship to render the private conversations "fruit" of the "presence" and "access." Partin's presence in the defense camp—allegedly attributable to the government—no more "vitiated" the private communications made to him by Hoffa and King than an illegally arrested suspect's presence in a police station "vitiates" all statements made by the suspect while there. Consequently, even it it be assumed in the present case that the claimed illegality bore some attenuated relationship to the government's opportunity to obtain the challenged evidence—which supposes, in turn, that Partin would not have been "present" if the government had not requested information from him—this circumstance would not, under these decisions, render the evidence fruit of the illegality. See also *United States* v. *Remington*, 208 F. 2d 567 (C.A. 2), certiorari denied, 347 U.S. 913; *People* v. *Guillory*, 178 Cal. App. 2d 854.[87]

[87] For other relevant decisions, all supporting the government's position, see *Smith* v. *United States*, 324 F. 2d 879, 881–882 (C.A.D.C.), certiorari denied, 377 U.S. 954 (testimony by eyewitness held admissible, though police learned of his existence and identity while questioning accused during period of illegal detention); *Bynum* v. *United States*, 274 F. 2d 767 (C.A.D.C.) (as explained in *Payne* v. *United States*, 294 F. 2d 723, 726–727 (C.A.D.C.), certiorari denied, 368 U.S. 883) (fingerprint evidence obtained from F.B.I. files held properly admitted, though government had been able to obtain evidence

2. No policy considerations based on "deterrence" or "the imperative of judicial integrity" warranted exclusion of Partin's testimony

The only remaining grounds for excluding Partin's testimony would be that its exclusion would operate as some form of deterrence to future government conduct of this nature, or that the "imperative of judicial integrity" (*Elkins* v. *United States*, 364 U.S. 206, 222) requires it (Pet. Br. 51–52). We submit that neither claimed basis for exclusion is valid, either on principle or under any authority.

At the outset, it is important to observe the governing principle that, without the sanction of congressional enactment, the federal courts have no discretion to exclude evidence, the admission of which is not unconstitutional, because the manner in which it was obtained may offend what some may deem proper standards of ethical conduct. *Olmstead* v. *United*

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only because it knew accused's identity through fingerprints obtained from accused while unlawfully detained); *Gregory* v. *United States*, 231 F. 2d 258 (C.A.D.C.), certiorari denied, 352 U.S. 850 (conviction held not vitiated by fact that investigation which led police to suspect accused was suggested to them by their finding clipped newspaper account of crime in place, frequented by accused, where police had no right to be). Compare *Costello* v. *United States*, 365 U.S. 265, 280 (fact that wiretaps prompted calling of denaturalization respondent before official bodies to whom he admitted falsity of his naturalization petition held not to have tainted evidence relied on for denaturalization, where prosecutor's knowledge which impelled admissions came from independent sources and "any connection between the wiretaps and the admissions was too attenuated to require" exclusion). And see *Payne* v. *United States*, *supra*, 294 F. 2d at 726–727 (witness' testimony identifying accused as his swindler held admissible, though witness first identified him at lineup during period of illegal detention).

States, 277 U.S. 438, 468. See, also, *Lopez* v. *United States,* 373 U.S. 427, 440; *Sherman* v. *United States,* 356 U.S. 369, 372; *On Lee* v. *United States,* 343 U.S. 747, 757–758; *Trupiano* v. *United States,* 334 U.S. 699, 706; *United States* v. *Thomas,* 303 F. 2d 561, 563 (C.A. 6); *Wellman* v. *United States,* 227 F. 2d 757, 770 (C.A. 6), vacated on other grounds, 354 U.S. 931; *United States* v. *Dennis,* 183 F. 2d 201, 224–225 (C.A. 2), affirmed on a different issue, 341 U.S. 494. As this Court observed in *Elkins* v. *United States,* 364 U.S. 206, 216: "[A]ny apparent limitation upon the process of discovering truth in a federal trial ought to be imposed only upon the basis of considerations which outweigh the general need for untrammeled disclosure of competent and relevant evidence in a court of justice." This principle was spelled out more fully in *Lopez* v. *United States, supra,* 373 U.S. at 440:

> The function of a criminal trial is to seek out and determine the truth or falsity of the charges brought against the defendant. Proper fulfillment of this function requires that, constitutional limitations aside, all relevant, competent evidence be admissible, unless the manner in which it has been obtained—for example, by violating some statute or rule of procedure—compels the formulation of a rule excluding its introduction in a federal court.

No exclusionary rule is required here; nor would any be appropriate. In *Elkins,* this Court held inadmissible in a federal trial evidence which had been obtained by State officers in violation of the Fourth

Amendment (as absorbed in substance by the Fourteenth). The primary basis for this rule was the Court's approval (364 U.S. at 218) of Mr. Justice Jackson's statement in dissent in *Brinegar* v. *United State,* 338 U.S. 160, 181: "Courts can protect the innocent against such invasions [*i.e.,* unconstitutional searches] only indirectly and through the medium of excluding evidence obtained against those who frequently are guilty." In other words, the *only* means of enforcing the Fourth Amendment's guarantee is by excluding evidence obtained in violation of it; otherwise the guarantee is "reduced to 'a form of words.'" *Mapp* v. *Ohio,* 367 U.S. 643, 648.

Petitioners' claim that the government infringed Hoffa's right to privacy in his consultations with his attorneys stands on an entirely different footing. The obvious method of enforcing that constitutional guarantee is by reversing any conviction produced by a proceeding in which the right was violated to the prejudice of the accused. This remedy is most in keeping with the constitutional right which is being protected. For what the Sixth Amendment guarantees is that a criminal trial, and such preliminary proceedings as are critical to the determination of guilt or innocence, shall not be conducted without effective assistance of counsel for the defendant. The vice in any unauthorized intrusion is that the trial ceases being one conducted in accordance with the constitutional protection. It is, therefore, appropriate that it be voided and that a new trial be held. This would clearly be a sufficient deterrent to the

government, since it would put prosecutors on notice that their trial efforts will go for naught if they deprive defendants of privacy in their communications with their attorneys.

We have demonstrated that the alleged Sixth Amendment violation neither caused nor contributed to Partin's reports of petitioners' illegal activities. Hence the admission of his testimony in evidence did not, in any sense, allow the government to enjoy "fruit" of any "wrongdoing." Petitioners' claim that the proof should have been excluded generally to deter the government from future constitutional violations was squarely answered by this Court in *United States* v. *Mitchell,* 322 U.S. 65. There the defendant contended that a statement which had not been induced by illegal detention should have been excluded under the rule of *McNabb* v. *United States,* 318 U.S. 332, because an impermissible detention *followed* the making of the statement. This Court held (322 U.S. at 70–71; emphasis added):

> But in any event, the illegality of Mitchell's detention does not retroactively change the circumstances under which he made the disclosures. These, we have seen, were not elicited through illegality. Their admission, therefore, would not be use by the Government of the fruits of wrongdoing by its officers. Being relevant, *they could be excluded only as a punitive measure against unrelated wrongdoing by the police.* Our duty in shaping rules of evidence relates to the propriety of admitting evidence. *This power is not to be used as an indirect mode of disciplining misconduct.*

Nor is there any basis in the *Coplon* and *Caldwell* decisions for applying such a punitive rule. In both cases the question presented was the validity of the trial at which the interference with the accused's rights had occurred. The key to those decisions is found in the language quoted by the *Caldwell* court from the *Coplon* opinion; the court observed that the interference "*invalidates the trial at which it occurred* and requires a verdict of guilty therein to be set aside, regardless of whether prejudice was shown to have resulted from the denial." 205 F. 2d at 881, quoting from 191 F. 2d at 759 (emphasis added). The court's remedy in each case was to direct "a new trial at which the accused can be free of surreptitious interception * * *."[58] 191 F. 2d at 760; see 205 F. 2d at 881–882, n. 11. Petitioners' Chattanooga trial, like the second trial in *Caldwell*, see 218 F. 2d 370 (C.A.D.C.), certiorari denied, 349 U.S. 930, was "free of surreptitious interception." The *Caldwell* and *Coplon* cases required no more.

Further support for our contention that any alleged illegality during the Nashville trial would not warrant exclusion of Partin's untainted testimony in the subsequent trial for a different offense is provided by recent decisions of the Second and Ninth Circuits. In *United States* v. *Guerra*, 334 F. 2d 138, 143–147 (C.A. 2), certiorari denied, 379 U.S. 936, an indicted defendant was questioned by an Assistant United States Attorney before counsel had been appointed to repre-

[58] The order in *Coplon* was made contingent on a showing by the accused that the interceptions alleged had occurred.

sent him. The Second Circuit noted that the questioning had violated the accused's Sixth Amendment rights (under the rule of *Massiah* v. *United States*, 377 U.S. 201, decided subsequently to the trial under review), but ruled that the fact that this had occurred did "not of itself mean that all subsequent proceedings were tainted with that illegality." 334 F. 2d at 145. Having concluded that the use to which the post-indictment interrogation had been put at the trial had not prejudiced the defendant, the court affirmed his conviction. The clear holding of *Guerra* is, thus, that the bare fact that the government has engaged in some unlawful interference with a defendant's right to counsel does not warrant reversal of the defendant's conviction unless the conviction is the fruit of the illegality. A purpose to "deter" such misconduct in the future is not enough.

The same reasoning was apparently applied in *Martin* v. *United States*, 335 F. 2d 945, 949–950 (C.A. 9), where the defendant had obtained a reversal of his earlier conviction on the ground that the prosecutor at that trial had represented a co-conspirator of the accused (as to whom a severance was granted) in the pre-indictment proceedings. On appeal from his conviction on retrial, at which a different prosecutor represented the government, the defendant urged that the "taint" which had invalidated the first trial also "infected" the second. The Ninth Circuit, noting that no prejudice to the accused had been or could be demonstrated, summarily rejected the claim.

Both these decisions demonstrate that government interference with a defendant's Sixth Amendment rights does not give rise to a rule of exclusion, or other prophylactic principle, which bars the use of untainted evidence or requires reversal of a conviction after a trial which is free of such interference. In each instance, the critical question is not how the government ought to be deterred (or if it should be deterred at all), but whether the evidence on which the defendant was convicted was the "fruit" of any illegality. As the Second Circuit observed in *United States* v. *Guerra, supra,* 334 F. 2d at 146:

> [I]f, at times, society's interest in bringing the guilty to justice has necessarily been subordinated to its concern for protecting the innocent or maintaining the integrity of [its] police, prosecutorial and judicial machinery, that interest has never been—and in a civilized society can never be—entirely forgotten. The day has certainly not come when courts will set a convicted criminal free for no reason other than that some practice of police or prosecution—wholly unrelated to the conviction itself—did not meet with their approval. If that unhappy day should ever arrive, the often-heard criticism that law and lawyers are interested only in "technicalities" will have a ring of truth, and courts may rightfully be accused of exalting form above substance.

For substantially these same reasons, petitioners misplace their reliance on the "judicial integrity" rationale of the *Elkins* case, *supra.* That rationale, as paraphrased by this Court in the *Wong Sun* case,

371 U.S. at 486, is that "the doors of the federal courts [must be closed] to any use of evidence unconstitutionally obtained." But *Wong Sun* itself, as we have seen, shows that the evidence in dispute, to be within the scope of that rationale, must be the "fruit" of the "primary taint" (pp. 110, 113–114, *supra*). We have shown that the statements which were testified to by Partin were not, under the decisions or in any meaningful sense, the "fruit" of any Sixth Amendment violation—even assuming, as we do *arguendo,* that such a violation occurred. The rationale of the *Elkins* case is, therefore, totally inapposite.

II

THE ADMISSION OF PARTIN'S TESTIMONY VIOLATED NO EXCLUSIONARY RULE BASED UPON THE FOURTH AMENDMENT

Petitioners' Fourth Amendment claim is essentially the same as that asserted in *Lewis* v. *United States,* No. 36, this Term, and it rests on the same fundamental error regarding the relevance of the Fourth Amendment as does the argument in *Lewis.* Petitioners' contention is, in brief, that since Partin concealed the fact that he had agreed to report illegal activity to the government and since his presence in Hoffa's hotel suite was attributable, in part, to this concealment, the statements made to him by Hoffa and King in the suite were heard in violation of the Fourth Amendment and could not, therefore, be testified to by Partin (Pet. Br. 32–44). The argument misapprehends the protection afforded by the Fourth Amendment and subverts its purpose.

A. THE FACT THAT OTHERWISE UNPRIVILEGED STATEMENTS ARE MADE IN A HOME DOES NOT MAKE THEIR DISCLOSURE A VIOLATION OF THE FOURTH AMENDMENT.

Again, we begin (see p. 71, *supra*) by articulating our premises. We agree that when petitioner Hoffa was occupying a hotel suite in Nashville during the 1962 trial, he was shielded by the Fourth Amendment against unreasonable governmental searches and seizures (Pet. Br. 32). We also agree that the Fourth Amendment forbade not merely forcible intrusions upon the privacy of the suite, but also surreptitous and guileful ones (Pet. Br. 36–37). And we finally agree that the Fourth Amendment protected not only the physical and tangible items secreted by Hoffa in his suite but also verbal statements insofar as the privacy of the suite was relied upon to keep them from unwanted auditors (Pet. Br. 39–42). These three propositions are plainly established by *United States* v. *Jeffers,* 342 U.S. 48; *Gouled* v. *United States,* 255 U.S. 298; and *Silverman* v. *United States,* 365 U.S. 505.

There is one critical element in this case, however, which plainly makes the Fourth Amendment inapplicable to Partin's testimony. That is the fact that the statements made in the hotel suite were intended by Hoffa and King to be heard by the individual who disclosed them—Edward G. Partin. By repeating statements made to him in the hotel room Partin was not violating the privacy of the suite; unlike the eavesdroppers in *Silverman* he was not an unwanted intruder who was meant to be excluded by the physical and legal walls of the constitutionally protected area.

The statements had been intended for his ears, and the speakers had placed their confidence in him not to repeat them. While they were relying on the privacy of the hotel suite to keep out third persons to whom they did not want to disclose the matters told to Partin, they were not relying on that privacy to prevent Partin from repeating their statements.

Or, to put the matter another way, when one makes indiscreet revelations, intended to be kept confidential, which the auditor thereafter reveals to the government, the damage suffered as a result of the misplacement of trust bears no relationship, legal or logical, to the place where the statements were made. The harm sustained is precisely the same whether the incriminating remarks are made on the street, in one's office, or in the privacy of one's home. In this very case, for example, as petitioners themselves point out, not all of the incriminating statements testified to by Partin were made in Hoffa's hotel suite. While those (or most of them) made by Hoffa himself occurred in the suite, some of the most incriminating of King's statements were made at the courthouse, in the hotel lobby, and at unspecified places. See Pet. Br. 14–18, 32. And it is apparent that the statements made in the suite were neither more nor less incriminating, more nor less damaging, than if they had been made in places wholly unprotected by the Fourth Amendment. *Where* the statements were made, in a word, was immaterial.

That is the basic error which permeates petitioners' entire Fourth Amendment claim, and it is precisely the ground on which this Court, apparently

unanimously, rejected a similar contention in *Lopez* v. *United States,* 373 U.S. 427. The Court held in *Lopez* that Davis, the internal revenue agent who pretended to collaborate in the defendant's effort to bribe him (373 U.S. at 438),

> was not guilty of an unlawful invasion of petitioner's office simply because his apparent willingness to accept a bribe was not real. * * * He was in the office with petitioner's consent, and while there he did not violate the privacy of the office by seizing something surreptitiously without petitioner's knowledge. * * * The only evidence obtained consisted of statements made by Lopez to Davis, statements which Lopez knew full well could be used against him by Davis if he wished. * * *

It is important to note that what divided the Court in the *Lopez* case was not the claim that Davis personally had violated the Fourth Amendment by entering Lopez' office without disclosing his real intentions. Indeed, Mr. Justice Brennan's dissent in *Lopez* (joined in by Justices Douglas and Goldberg) fully supports our position in the present case that Partin's *personal* testimony concerning Hoffa's statements to him was admissible notwithstanding the fact that the statements were made in a private room to which Partin was admitted only because it was not known that he would report to the government. The dissent states (373 U.S. at 450):

> On Lee assumed the risk that his acquaintance would divulge their conversation; Lopez assumed the same risk *vis-à-vis* Davis. The risk inheres in all communications which are not in

> the sight of the law privileged. It is not an undue risk to ask persons to assume, for it does no more than compel them to use discretion in choosing their auditors, to make damaging disclosures only to persons whose character and motives may be trusted. * * *

Referring to the government's argument in *Lopez* that if the agent's relatively innocuous conduct in that case were found offensive "the whole gamut of investigatorial techniques involving more serious deception" would also have to be condemned, with the consequence that police officers could "no longer employ confidential informants, act as undercover agents, or even wear 'plain clothes'," Justice Brennan stated (373 U.S. at 465; emphasis added):

> [T]his argument misses the point. *It is not Agent Davis' deception that offends constitutional principles,* but his use of an electronic device to probe and record words spoken in the privacy of a man's office. For there is a qualitative difference between electronic surveillance, whether the agents conceal the devices on their persons or in walls or under beds, and conventional police stratagems such as eavesdropping and disguise. The latter do not so seriously intrude upon the right of privacy. *The risk of being overheard by an eavesdropper or betrayed by an informer or deceived as to the identity of one with whom one deals is probably inherent in the conditions of human society. It is the kind of risk we necessarily assume whenever we speak.* * * *[10]

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[10] Similarly, what divided the Court in *On Lee* v. *United States*, 343 U.S. 747, was not whether Chin Poy, the old-

See, also, *Trupiano* v. *United States*, 334 U.S. 699, 701–702, 706, where this Court, in holding that the seizure without a warrant of the illicit still there involved had been unlawful, observed that Nilsen, the federal agent who had accepted work at the still in the guise of a "dumb farm hand," could have supplied information forming the basis of a "detailed and effective search warrant."

In short, there has been no dissent from the view that statements made to a government informant in the quarters of the declarant, to which the declarant has admitted the informant, may be received in evidence (without impinging on any right of the de-

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acquaintance-turned-informer, could properly testify to statements which *he* heard On Lee make in On's laundry (the government did not offer Chin Poy as a witness), but whether the narcotics agent, stationed outside with the receiving set, could testify to the statements, as broadcast by the transmitter concealed on Chin Poy. Mr. Justice Burton's dissent, in which Justice Frankfurter joined, made specifically clear the view of those Justices that "Chin Poy, who was lawfully in petitioner's room, could have testified as to what he, himself, saw or heard there." 343 U.S. at 766. Petitioners suggest that *On Lee* is distinguishable from this case because the *On Lee* informer entered only the "public room" of the laundry whereas Partin entered Hoffa's actual "living quarters" (Pet. Br. 42). The suggestion is, however, unsound. It is true that the informer in *On Lee*, while conversing with the proprietor, apparently did not go beyond the "customers' room" of the laundry. 343 U.S. at 749. (An ironing room and the proprietor's living quarters were beyond it. *Ibid.*) It is evident, however, both from the majority opinion and the several dissenting opinions in that case that no distinction was drawn by any of the participating Justices, for purposes of the decision, between the "customer's room" and the more private areas of the establishment. See, particularly, 343 U.S. at 751–753 (majority opinion) and at 765–767 (Justice Burton's dissent).

clarant grounded in the Fourth Amendment) through the testimony of the informant himself.

That view, as we demonstrate in our brief in *Lewis* v. *United States*, No. 36, this Term is supported by the history and consistent application of the Fourth Amendment. For it is entirely clear that the right secured by the Fourth Amendment is a right to keep unwanted eavesdroppers or observers out of "the sanctity of a man's home and the privacies of life" (*Boyd* v. *United States*, 116 U.S. 616, 630)—*i.e.*, to shield the privacy of a place or of an individual's body—not a right to prevent breaches of trust by those to whom disclosures have been made. In this case, as in *Lewis* and in *Osborn* v. *United States*, No. 29, this Term, the occupant of the constitutionally protected private domain was not relying on the privacy of that location *vis-à-vis* the person to whom he spoke. While his confidence that the invitee would not reveal what he had seen or heard was misplaced, there was no taking, by force or by stealth, of any word or thing which the occupant intended to keep to himself. There was, therefore, no violation of the Fourth Amendment.

There are, we submit, two very important differences between these cases and *Gouled* v. *United States*, 255 U.S. 298, on which petitioners place their principal reliance (Pet. Br. 36, 38, 39–41, 43). The *Gouled* case involved the surreptitious taking of private papers, in the defendant's absence, from an office to which a government agent, acting under the direction of his superiors, had entered in the guise of a "friendly call." The seizure from protected premises, without the owner's permission or the shadow of right,

of incriminating documents which the owner did not intend their purloiner to see (much less to appropriate) is obviously different in at least two respects from the hearing of statements made by a host to a guest who is his pretended friend. One difference is that the host who has invited a guest into his home and made statements to him has voluntarily chosen, albeit under a misapprehension as to the other's state of mind, to make a disclosure to the person with whom he has spoken. *Gouled* would be analogous to the instant case in that regard if, rather than having been larcenously abstracted, the documents in question had been *shown* by the occupant of the office to the caller-informer, and the latter had then testified to their contents.

Another distinction between this case and *Gouled* arises out of the different nature of the matters being seized and the relationship between them and the privacy of the place where the seizure occurs. A verbal statement cannot be secreted in a home; a paper or other tangible matter may be. We recognize, as we have noted (p. 125, *supra*), that verbal statements are in some circumstances subject to the protections of the Fourth Amendment, but we submit that only a third-party intruder or eavesdropper can ever "seize" statements in violation of the constitutional protection afforded to private homes or other locations; the person to whom they are uttered is not extracting them from any private hiding place no matter how false his representations.[40] At most, he is

[40] Cases like *Wong Sun* v. *United States*, 371 U.S. 471, and *Fahy* v. *Connecticut*, 375 U.S. 85, on which the ACLU *Amicus*

eliciting thoughts from the speaker's mind—conduct which has never been held to be within the protections of the Fourth Amendment and which is surely unrelated to the place *where* the conversation occurs. On the other hand, when a document which was secreted in the home to secure it against outsiders is removed by an informant from its hiding place—either without its owner's consent or pursuant to some misrepresentation—it may well constitute an impingement upon "the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." *Silverman* v. *United States,* 365 U.S. 505, 511. The difference, in brief, is that statements are not entrusted to the privacy of the home (except to the extent that the parties to a conversation rely upon their presence in a home to exclude eavesdroppers), whereas documents or tangible items are.

The other decisions relied on by petitioners are inapposite because none involved statements and all concerned misrepresentations which enabled the government agents to seize or see things which had been

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brief relies (p. 16), are distinguishable. In *Wong Sun*, the statement which was unlawfully obtained was in part the product of an unconstitutional arrest (371 U.S. at 485–486), and in *Fahy* it was a possible product of the impermissible coercive effect of confronting a suspect with illegally seized evidence (375 U.S. at 89–91). In those circumstances, statements made to an intended listener may, of course, be the result of prior unconstitutional conduct. Our argument here is limited to invasions of the privacy of a protected enclosure, and it is in that context that we submit that only an eavesdropper can be deemed to have "seized" a statement by such an invasion.

secreted in a constitutionally protected area. *Go-Bart Co.* v. *United States,* 282 U.S. 344 (Pet. Br. 36, 38, 43), involved a false representation by a federal agent that he possessed a search warrant. Pursuant to this misrepresentation he ransacked desks, safes and filing cabinets. See 282 U.S. at 358. *Fraternal Order of Eagles, No. 778* v. *United States,* 57 F. 2d 93 (C.A. 3), and *United States* v. *Mitchneck,* 2 F. Supp. 225 (M.D. Pa.) (Pet. Br. 36–37), concerned affirmative misrepresentations by federal agents whose interest was to observe what was being done in a constitutionally protected enclave. The holdings that they were not entitled to gain entry for these purposes by deception any more than they could by force are not inconsistent with our position in this case and in *Lewis.* Partin was not seeking entry to Hoffa's suite to see, on behalf of the government, what was happening in the privacy of that room. He was in the suite because that, fortuitously, was where Hoffa chose to speak with him, and the conversation was, as we have shown, totally unrelated in any logical or legal sense to the privacy of the suite.[61]

In concluding this phase of our argument, we think it important to emphasize the limited character of the deception involved here. Hoffa knew Partin's

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[61] *United States* v. *Reckis,* 119 F. Supp. 687 (D. Mass.), *United States* v. *Guerrina,* 112 F. Supp. 126 (E.D. Pa.), and *United States* v. *Lipshitz,* 132 F. Supp. 519 (E.D. N.Y.), involved the fraudulent obtaining of consent to a search or to the examination of private documents. In each of these instances, tangible matter which had been secreted in protected premises was revealed as a result of fraud by government agents.

identity and he also knew (unlike the defendant in *Go-Bart, supra*) that he possessed the legal right and power to exclude Partin from his suite and—what we believe is really more relevant—not to speak to him any time or anywhere. The only fact Hoffa did not know was that Partin intended to comply with his legal duty (see pp. 80–81, *supra*) and to advise law-enforcement officials if criminal offenses were planned.[62] That, we submit, is not, in any event, deception which is reached by the Fourth Amendment. See our brief in *Lewis* v. *United States*, No. 36, this Term.

B. THIS CASE INVOLVES NO "GENERAL SEARCH" OF CONSTITUTIONALLY PROTECTED PREMISES.

In an effort to bring the facts of this case within the Fourth Amendment, petitioners describe Partin's conduct as a "general and exploratory" search in Hoffa's suite for "any evidence of jury tampering or other crime" (Pet. Br. 33, 38; see also Pet. Br. 34, 43–44). This is a misleading characterization.

Partin was, as we have demonstrated above, engaged in no "search" of the suite whatever. He did not probe its secrets and made no effort to discover anything that had been concealed within its

[62] We recognize, of course, that Partin had not merely formed the intention but had, in addition, communicated that intention to the government when he agreed on October 20 with Grimsley's request. But that formal expression of intention does not, we believe, add anything of substance to the Fourth Amendment claim since the deception of the premises' occupant is essentially the same whether or not the government has been told in advance.

walls. He neither took nor reported the contents or existence of any paper, nor did he seize or observe any tangible piece of evidence. He did not eavesdrop on any conversation that occurred in the suite. Indeed, he never attempted to discover any such evidence. What he did was to converse with petitioners Hoffa and King and repeat to government officials what they had said to him or in his presence.

Such activities by a government informant do not constitute a "search." If they did, every use of an informant would amount to an unconstitutional breach of privacy. We demonstrate in our brief in *Lewis* v. *United States,* No. 36, this Term, that informants have always been used in the detection of crime, that their use has been approved by this Court as well as by lower federal courts, and that they frequently provide, particularly in certain areas of crime (including bribery), the only practical means of apprehending and convicting the guilty. To say, as petitioners in effect urge this Court to do, that an informant violates the Fourth Amendment if one or more reported conversations with a suspected offender occur in the latter's home is to pervert the Fourth Amendment by construing it "to make the home a safe haven for illegal activities." *McDonald* v. *United States,* 335 U.S. 451, 455–456.

Part of petitioners' attack is based upon the "duration" of Partin's activities (Pet. Br. 43; ACLU *Amicus* Br. 13). But Partin's reports to the government lasted only so long as petitioners continued their unlawful course. The fact that numerous attempts

were being made throughout the trial to corrupt jurors justified Partin's activities and reports during those entire two months.

The fact is that Partin was not, during the trial, seeking out "evidence" with which to convict petitioners or anyone else. We have demonstrated above, in great detail (pp. 86–91, *supra*), that the government's paramount interest was to preserve the integrity of the Nashville trial, and that Partin's reports were being used—as the disqualification of two jurors demonstrates—to keep corrupt influences out of the jury's deliberations in that case. The most convincing proof of this limited purpose is the fact that Partin's reports ceased altogether with the end of the Nashville trial. Petitioner Hoffa did not know until Partin began testifying in Chattanooga that he had been reporting to the government. He presumably retained the same trust in Partin after the Nashville trial as he had during that proceeding. Yet Partin made no effort, after the trial was over, to trade on this confidence to obtain incriminatory statements or other evidence which could be used to convict Hoffa of obstruction of justice. The only statements testified to by Partin in this proceeding occurred *during* the Nashville trial.

This factor also distinguishes the facts of this case from a "general and exploratory search" for evidence. Here the crime was in the process of being committed; indeed, some of the statements made by Hoffa to Partin (such as the request that he be available to "pass something") were in furtherance of the illegal venture. This is not an instance, in other words, in

which officials delegated someone generally to obtain evidence by stealth against an individual who was suspected of having committed an offense in the past. The interest of law enforcement here was to prevent, not to punish.

The *amicus* brief of the American Civil Liberties Union characterizes Partin's activities as "an espionage operation" which "is the hallmark of a police state" (ACLU *Amicus* Br. 13–14) and contends that it could be conducted only upon probable cause. The characterization is unfounded and the legal contention is unsound. Partin was engaged in no more of an "espionage operation" than any person who informs the government that illegal activity is being planned and is then requested to pretend to be a confederate in order to learn the details of the plan. If Partin's was an "espionage operation," so was the conduct of the agent in *Lopez* v. *United States,* 373 U.S. 427. Both pretended that they would not disclose the unlawful scheme to government officials and both thereby heard incriminating statements. See our brief in *Lewis* v. *United States,* No. 36, this Term. There is no more basis for the assertion that Hoffa was under "police surveillance" (ACLU *Amicus* Br. 13–14); Partin was not asked to watch Hoffa nor did he do so. He met and conversed with Hoffa on many occasions during the trial, but that hardly amounts to "surveillance."

The *amicus'* characterization of Partin's conduct rests largely on the assertion that, when government representatives requested Partin to report evidence of jury tampering or other illegal activity, they had ab-

solutely no basis to believe that petitioner Hoffa might be planning to engage in such criminal conduct (ACLU *Amicus* Br. 13–14). The *amicus* therefore analogizes the request to a search without probable cause. The suggestion that government agents must have objectively demonstrable grounds for suspicion before they may investigate, by means which have never heretofore been thought to involve constitutional issues, a crime that is in the process of being committed or that could be committed in the future is a novel one, to say the least. Such a rule would shield first offenders from otherwise lawful investigations and would, in effect, mean that informants could never be used except in dealing with offenders who commit numerous violations in a short span of time (such as street-corner narcotics peddlers). Obviously jury bribery can occur only during a trial, and it is most difficult to establish before such a trial begins that the prospective defendant is planning corruptly to influence a jury. Moreover, since petitioners never claimed during this trial that probable cause (or any lesser standard of suspicion) was required, the government had no opportunity to place into the record the information on which it made the request of Partin. Suffice it to say at this juncture that apart from information in government files, there was adequate material in the public news media and in available court records relating to earlier trials of petitioner Hoffa upon which one could rest a reasonable suspicion that corrupt approaches to jurors might be

tried in this case.[63] See also our brief in *Osborn* v. *United States,* No. 29, this Term, p. 32, n. 5.

Finally, petitioners make the surprising contention that Partin was unlike the usual informant because he was "not a participant" in the crime (Pet. Br. 31). Other than with respect to the offense alleged in count 4, on which all defendants were acquitted, Partin played no role, even a pretended one, in the criminal activities of his associates. His function throughout was the entirely passive one (so far as law-breaking is concerned) of listening to their plans and complaints. It is surprising to hear, however, that Partin's very lack of activity (as a participant) is to be considered a point against him in the Court's appraisal of the propriety of the function he served. From the standpoint of accused persons' constitutional rights, such substance as there may be in petitioners' suggested distinction between participating and nonparticipating informers would appear to cut against them. See, however, our brief in *Lewis* v. *United States,* No. 36, this Term, where we point out that pretended participation short of entrapment has never been held to invalidate an informant's testimony. Certainly Par-

[63] A full report of an attempted approach to a juror in a trial of petitioner Hoffa in the Southern District of New York appeared in N.Y. Times, June 24, 1958, p. 23, col. 1 (containing excerpts from trial minutes in which matter was reported); N.Y. Times, June 25, 1958, p. 21 col. 2. See also, *e.g.*, Washington Star, June 24, 1958, p. A2, col. 5; Chicago Tribune, June 24, 1958, p. 1, col. 3; St. Louis Post Dispatch, June 24, 1958, p. 2A, col. 4; Washington Post, June 26, 1958, p. A12 (editorial). See also, with respect to an earlier trial, Washington Star, July 9, 1957, p. A7, cols. 1–5; Washington Post, July 9, 1957, p. A2, cols. 5–7, and July 11, 1957, p. 1, col. 4; New York Times, July 20, 1957, p. 7, col. 2.

tin's complete passivity *vis-à-vis* the criminal activities involved is not a factor in petitioners' favor.

III

THE ADMISSION OF PARTIN'S TESTIMONY REGARDING INCRIMINATORY STATEMENTS MADE TO HIM BY HOFFA AND KING AFTER THEY HAD SAID ENOUGH TO WARRANT THEIR ARREST DID NOT VIOLATE THE FIFTH OR SIXTH AMENDMENT

Petitioners contend that the incriminating statements made by Hoffa and King in the "latter part of" Partin's "interrogations for the government" were inadmissible because Partin heard them in violation (1) of those petitioners' Sixth Amendment right of counsel in the subsequently commenced prosecution for jury tampering (Pet. Br. 53–57) and (2) of their Fifth Amendment privilege against self-incrimination in respect to that offense (Pet. Br. 57–59). Neither aspect of this contention has substance.

Petitioners argue that the government "had sufficient ground for taking Petitioners Hoffa and King into custody, and for charging them with jury tampering" "[n]ot later than October 25" (Pet. Br. 53).[64]

[64] October 25, as petitioners note, was the date on which Hoffa told Partin, following juror Tippens' report to the court on the previous day of a $10,000 bribe-offer which had been made to him, that it would be necessary to "lay low" for a few days because "[t]he dirty bastards [*sic*] went in and told the Judge that his neighbor had offered him $10,000" (Pet. Br. 15, 53; 2 R. 442; p. 6, *supra*). We note, in this regard, that the district judge did not believe that this constituted sufficient evidence of Hoffa's participation in the offense to warrant submission of the count based on this incident to the jury. The court of appeals held that this ruling by the district court was an error favorable to the defense (1 R. 207).

"Had the Government done either, or both," it is said, "any admissions claimed by Partin to have been made thereafter would have been barred by the Sixth Amendment" (Pet. Br. 54–55). And since the Sixth Amendment right of counsel and the Fifth Amendment right not to incriminate onself "are intimately related," it being "the Sixth Amendment right which protects the exercise of the Fifth Amendment right," the post-October 25 statements, it is claimed, are barred also by the Fifth Amendment (Pet. Br. 57–58). The argument is patently unsound.

Neither *Massiah* v. *United States,* 377 U.S. 201, nor *Escobedo* v. *Illinois,* 378 U.S. 478, even remotely implied that a government informant may not converse with one who has been neither indicted nor arrested for any offense (King's case) without abridging his constitutional rights; or that an informant may not speak, without the permission of the defendant's counsel, to one who has been indicted for a particular offense (Hoffa's situation) concerning a matter which is totally unrelated to the charged crime. Nor does either decision suggest that a government informant is prohibited from conversing with an individual who he has reason to believe is about to commit an offense or is actually engaged in committing one. See *Vinyard* v. *United States,* 335 F. 2d 176, 183–184 (C.A. 8), certiorari denied, 379 U.S. 930, where testimony by an officer concerning a bribe offer made by the accused on the occasion of her arrest for another offense was held not governed by *Massiah* because the statements testified to related to a different offense from that for which the arrest had been made and counsel retained. See also *Grier* v. *United States,* 345 F. 2d 523, 524

(C.A. 9) (*Massiah* held not applicable to incriminating statements by unindicted, unarrested offender to informer, made "concurrent[ly] with the acts of the crime"; "One is not entitled to counsel while committing his crime * * *)"; *Battaglia* v. *United States,* 349 F. 2d 556, 559 (C.A. 9), certiorari denied, 382 U.S. 955 (same); *Garcia* v. *United States,* C.A. 10, decided July 27, 1966 (same).

The constitutional right to counsel, on which both *Massiah* and *Escobedo* turn, entitles an arrested or indicted defendant to insist on having his attorney present during any interrogation pertaining to the offense for which he has been arrested or indicted. It clearly does not foreclose inquiry on unrelated matters; it does not include a right to have an attorney present while another offense is being committed;[65] and it in no way affects the traditional executive prerogative of determining when to arrest and when to indict.[66] Cf. *Miranda* v. *Arizona,* 384 U.S. 436, 444, where it is noted that the rule of that case becomes operative "after a person has been taken into custody or otherwise deprived of his freedom of action in any signifi-

[65] See *Grier* v. *United States, supra,* 345 F. 2d at 524; *Battaglia* v. *United States, supra,* 349 F. 2d at 559; *Garcia* v. *United States, supra.*

[66] There were obviously sound reasons to wait until after the trial was concluded before arresting Hoffa and King for obstruction of justice. Had Hoffa been arrested during his trial, he would plainly have argued that this prejudiced the jury against him and warranted a mistrial. Moreover, substantial investigative work had to be done in order to determine who else was involved in the commission of the offense.

cant way," and that this was what the Court meant in *Escobedo* when it "spoke of an investigation which had focused on an accused" (*ibid.*, n. 4, referring to 378 U.S. at 490).

IV

THE USE BY THE GOVERNMENT OF PARTIN'S INFORMATION DENIED NO PETITIONER DUE PROCESS OF LAW

Petitioners urge, finally, that even if the government's actions in this case in its relations with Partin did not violate any of the specific guarantees of the Fourth and Sixth Amendments or of the self-incrimination clause of the Fifth, the government's conduct, viewed in its "totality," encroached on the "penumbra" of those protections and denied them due process of law (Pet. Br. 60–63). There is no merit to the claim.

Petitioners' argument is, in substance, merely a renewal of their attack on the "continuing process of ignoble deception" (Pet. Br. 63) which they say was practiced by Partin on two of their number. It is, in other words, a criticism of the use by the government, in the circumstances of this case, of the services of an informant—a practice, as we point out in our brief in *Lewis* v. *United States,* No. 36, this Term, as old as law-enforcement, and one which has been sanctioned by the courts from the beginning. Petitioners add only (Pet. Br. 60–62) that there is a "high risk of perjury" in the testimony of any informer and that in Partin's case this risk was "at its

highest" (Pet. Br. 60). That informers, like accomplices, may have motives to lie is not a fact of which this Court, in its decisions approving use of their testimony, has been unaware. While informers and accomplices, like other witnesses, may have motives to lie, they can also speak the truth, and it has always been considered a sufficient safeguard that their testimony be evaluated by properly instructed juries. Particularly where, as here, the informer's reports are thoroughly corroborated by independent proof, the danger that justice may miscarry because of an informer's false testimony is manifestly minimal. At all events, it has been the judgment of history that the interest of society in discovering the truth—the function of a trial—is best served by the law's recognition of the necessity for the testimony of informers and accomplices.

CONCLUSION

For the reasons stated it is respectfully submitted that the judgments of the court of appeals should be affirmed.

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SEPTEMBER 1966.

APPENDIX

In the District Court of the United States for the Middle District of Tennessee

Nashville Division

UNITED STATES OF AMERICA

v.

JAMES R. HOFFA AND COMMERCIAL CARRIERS, INC.

Criminal Action No. 13,241

Before the Honorable WILLIAM E. MILLER, *Judge,* and a jury, at Nashville, Tennessee, on the trial of the case, beginning October 22, 1962

* * * * *

TRANSCRIPT OF PROCEEDINGS OF OCTOBER 22, 1962

* * * * *

[14] Mr. NEAL [chief government attorney]. There is a matter that might be taken up now which bears on this subject. The Government wants only an impartial jury in this case. We want that desperately. For that reason we think we would have no objection to defense counsel getting additional peremptory challenges if the Government gets them.

* * * * *

* * * However, a juror has been telephoned by a man who claimed he was a newspaper reporter. The questions he asked, I believe, dealt with the various subject matter that a person would ask if he was examining a juror. She reported this, I understand.

Mr. HARWELL [United States Attorney]. This morning Mrs. Branham from Lebanon as a juror. She reported to the Marshall's office that she had been contacted. She was advised by Judge Humphries of Lebanon and some other lawyers to report to the Marshal's office this morning, which she did, and Mr. Evans [a deputy marshal] said he had reported it to your office and that Your Honor desired—although [15] he did not say who—to report it to my office. I interviewed her this morning.

The COURT. What panel is she on?

Mr. NEAL. Panel No. 1, and she is Juror No. 1, Mrs. J. B. Branham.

Mr. HARWELL. The person said his name was Allison, here with the local papers. He wanted first a comment from her. She refused to comment. He next wanted to know her previous jury service, what kind of cases she served on, wanted to know where her husband works, wanted to know if she had followed the Hoffa story in the newspapers and then she began to cut him short with the answers trying to get away and then she said he said in other words, you will listen to both sides before making up your mind, and those in substance were the inquiries that were made.

I believe the Nashville Tennessean wa[s] called and asked if any one was connected with their paper named Allison, and they said there was not and in contacting the other newspaper services it was learned—I understand it is unethical to call prospective jurors.

The COURT. Absolutely, there should not be any contact with any juror or prospective juror on the part of any one. Of course we don't know who it was.

Mr. OSBORN [a defense attorney]. I have personally instructed those who undertook to assist us orally and in writing that not only must [16] they

have no contact whatever with a juror but any person from whom they seek information must be instructed that that juror is not to be harassed or intimidated or bothered or even allowed to know it.

Mr. HARWELL. I don't intimate that anything was done by your people but that shows what could be done by people over-anxious one way or the other.

Mr. OSBORN. For either side.

* * * * *

[135] TRANSCRIPT OF PROCEEDINGS ON OCTOBER 23, 1962

* * * * *

[168] The COURT. A matter was brought to the attention of the Court yesterday which was discussed by the parties. I believe one member of the jury, Mrs. Branham—I believe you received some kind of telephone call from someone who purportedly represented himself as a newspaperman who wanted to interrogate you in regard to the case. I believe I received information to that effect.

I will ask you to state if that conversation and the fact that you received such a call would in any way prejudice you in this case.

Juror BRANHAM. No, I don't know but that it was a joke.

The COURT. You have no way of knowing where it came from or who it was?

Juror BRANHAM. No.

The COURT. Was there anything in the conversation that would cause you to develop any prejudice against this defendant, Mr. Hoffa?

Juror BRANHAM. No, because I don't know where the call came from. I don't have the least idea.

The COURT. Regardless of where it came from, did you form any opinion against him or any prejudice or inclination against him by reason of the conversation?

[169] Juror BRANHAM. Well, I can't answer that. If I knew where the call came from, I would, but I couldn't say. I just don't know.

The COURT. I want you to be very clear on this. If you have the slightest doubt in your mind about any prejudice against this defendant and your inability to give him a completely fair and impartial trial, then you should not be on this jury.

Juror BRANHAM. I have no reservations. I don't know who made the call and I don't have any idea about it at all. I am not particularly anxious to serve on this jury.

The COURT. That is not the question of whether you are anxious to serve, but I want to know if you have any prejudice against him whatsoever.

Juror BRANHAM. No.

Mr. OSBORN. Juror No. 9, while you were questioning the lady, tried to obtain your attention.

Juror STUART. I raised my hand, your Honor, because I got a similar call. This person announced himself as a Mr. Allen of the Nashville "Banner."

The COURT. By reason of that call, did you develop any prejudice against this defendant on trial? That is the crucial question in this case.

Mr. OSBORN. We would like to know if they attribute that call to the defendant.

[170] The COURT. Do you attribute that call to the defendant?

Juror STUART. No. It seemed like a bona fide call to me as announced. The interview seemed like an impartial one to me.

The COURT. You do not charge this defendant with making that call or having it made?

Juror STUART. No, sir.

The COURT. And you have no prejudice against him by reason of the call?

Juror D. M. HARRISON, Jr. I received a call from someone who said they were the Nashville "Banner."

The COURT. Have you formed any prejudice against the defendant or the Government?

Juror HARRISON. No.

The COURT. Do you attribute the call to either party in this cause?

Juror HARRISON. I couldn't say.

The COURT. I believe those are the only questions I have at this time.

As stated, the parties will have the privilege of questioning the jury.

* * * * *

[216] Mr. OSBORN. I think you are the lady who had a telephone call and I believe you reported it to the United States.

Juror BRANHAM. I was advised to report it.

Mr. OSBORN. I think you said you were advised to report it. Who advised you to report it?

Juror BRANHAM. Well, members of my family consulted others and I was told that that was the right thing to do, and that is what I tried to do.

Mr. OSBORN. What members of your family. Did you consult with your husband about it?

Juror BRANHAM. Yes. There were about 20 in my home when that call came in. He did not identify his paper which caused the first question. My son is in radio work and communications and he thought it was bad policy for the paper [217] not to confirm what paper they were working for.

Mr. OSBORN. It was an unsatisfactory, suspicious type of phone call. Is that correct?

Juror BRANHAM. He tried to get information from me concerning the case and I did not think it was right. I thought it was bad policy for a paper to do

that, so this reporter that we have there at home called Associated Press and they said they were not doing that kind of thing. That is all I know. I was told to report it.

Mr. OSBORN. They refused to take any responsibility for it, the people you called.

Juror BRANHAM. That is right.

Mr. OSBORN. To summarize your feelings, it was an unsatisfactory thing and you tried to look into it.

Juror BRANHAM. I resented some one trying to get information out of me about the trial.

Mr. OSBORN. Did you discuss that with your husband and others in the family?

Juror BRANHAM. Yes.

Mr. OSBORN. And they told you to report it? To whom did you report it?

Juror BRANHAM. To the Deputy Marshal.

Mr. OSBORN. Which deputy marshal?

Juror BRANHAM. Mr. Evans.

* * * * *

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